* Together with No. 269, Panhandle Eastern Pipe Line Co. v. United States.

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Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 268

MISSOURI-KANSAS PIPE LINE COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, ET AL.

No. 269

PANHANDLE EASTERN PIPE LINE COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

FILED JULY 22, 1940.

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THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, ET AL.

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 9, 1940.

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[fol. 1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF DELAWARE

No. 1099. In Equity

UNITED STATES OF AMERICA, Petitioner,

v.

COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, Geofge H. Howard, Phillip G. Gossler, Charles A. Munroe, George W. Crawford, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay, and John H. Hillman, Jr., Defendants

DOCKET ENTRIES

Mar. 6, 1935. Petition filed; same day subpoenas issued returnable March 26, 1935.

Mar. 6, 1935. Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation appear by Clarence A. Southerland Esq., their solicitor; same day praecipe filed.

Mar. 11, 1935. Marshal returns on subpoena for Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation "Served", etc.; same day writ filed.

Mar. 11, 1935. Marshal returns on subpoena for George W. Crawford, Thomas B. Gregory and John H. Hillman, Jr. "Served", etc.; same day writ filed.

Mar. 14, 1935. Marshal returns on subpoena for Burt R. Bay "Served", etc.; same day writ filed.

[fol. 2] Mar. 15, 1935. John H. Hillman, Jr. appears by Richards, Layton & Finger, his solicitors; same day praecipe filed.

Mar. 21, 1935. Marshal returns on subpoena for George H. Howard, Philip G. Gossler and Edward Reynolds, Jr. "Served" etc.; same day writ filed.

Mar. 21, 1935. Burt R. Bay appears by Charles F. Curley, Esq., his solicitor; same day praecipe filed.

Mar. 26, 1935. Stipulation filed; same day order extending time for filing answers until April 15, 1935; same day order filed.

Mar. 29, 1935. Motion of Clarence A. Southerland filed; same day order granting leave to withdraw as solicitor for Columbia Oil & Gasoline Corporation; same day order filed.

Mar. 29, 1935. Marshal returns on subpoena for Charles A. Munroe "Served", etc.; same day writ filed.

Apr. 2, 1935. Columbia Oil & Gasoline Corporation appears by Hugh M. Morris, Esq. and Ivan Culbertson, Esq., its solicitors; same day praecipe filed.

Apr. 13, 1935. Stipulation filed; same day order extending time for filing answer until April 30, 1935; same day order filed.

Apr. 24, 1935. Motion of Union Trust Company of Pittsburgh, et al., Executors to dismiss bill of complaint as to George W. Crawford, deceased, filed.

Apr. 24, 1935. Motion of Columbia Gas & Electric Corporation, et al. to strike certain language from bill, filed.

Apr. 24, 1935. Motion of Columbia Gas & Electric Corporation, et al. for bill of particulars filed.

Apr. 24, 1935. Order extending time for filing answer, etc. by Columbia Gas & Electric Corporation, et al.; same day order filed.

Apr. 24, 1935. Motion of John H. Hillman, Jr. for bill of particulars filed.

Apr. 24, 1935. Motion of John H. Hillman, Jr. to strike certain language from bill filed.

Apr. 24, 1935. Motion of Burt R. Bay for bill of particulars filed.

Apr. 24, 1935. Motion of Burt R. Bay to strike certain language from bill filed.

[fol. 3] Apr. 25, 1935. Motion of Columbia Oil & Gasoline Corporation for bill of particulars filed; same day order extending time for filing answer, &c.; same day order filed.

Apr. 25, 1935. Motion of Columbia Oil & Gasoline Corporation to strike certain language from bill, &c., filed; same day order extending time for filing answer, &c.; same day order filed.

Octo. 30, 1935. Burt R. Bay appears by James M. Malloy, Esq., his solicitor; same day praecipe filed.

Octo. 30, 1935. Application by plaintiff filed; same day order granting leave to file amended and supplemental petition; same day order filed.

Octo. 30, 1935. Amended and supplemental petition filed.

Nov. 20, 1935. Stipulation filed; same day order extend-

ing time for filing answer, &c. to amended petition until December 10, 1935; same day order filed.

Dec. 10, 1935. Motion of Defendants to strike certain portions of amended and supplemental petition filed.

Dec. 10, 1935. Order extending time for filing answer until after disposition of motion to strike; same day order filed.

Jany. 29, 1936. Charles A. Munroe appears by Hugh M. Morris, Esq. and Ivan Culbertson, Esq. his attorneys; same day praecipe filed.

Jany. 29, 1936. Answer of Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr., filed.

Jany. 29, 1936. Answer of Columbia Oil & Gasoline Corporation and Charles A. Munroe filed.

Jany. 29, 1936. Answer of John H. Hillman, Jr. filed.

Jany. 29, 1936. Answer of Burt R. Bay filed.

Jany. 29, 1936. Stipulation filed.

Jany. 29, 1936. Final decree that defendants be enjoined, and appointing Gano Dunn as trustee, &c.; same day decree filed.

May 14, 1936. First account of Gano Dunn, Trustee, filed. [fol. 4] May 16, 1936. Order setting account of Gano Dunn, Trustee down for consideration, May 21, 1936 at 1:00 o'clock P. M.; same day order filed. (Exit copies.)

May 21, 1936. Hearing on First account of Gano Dunn, Trustee.

June 19, 1936. Stipulation filed; same day decree amending decree of January 29, 1936, &c.; same day decree filed.

Aug. 12, 1936. Report of Gano Dunn, Trustee, filed.

Aug. 18, 1936. Second account of Gano Dunn, Trustee, filed.

Dec. 8, 1936. Account of Gano Dunn, Trustee, filed.

Feby. 16, 1937. Account of Gano Dunn, Trustee, filed.

Mar. 1, 1937. Report of Gano Dunn, Trustee for semi-annual period, filed.

May 25, 1937. Account of Gano Dunn, Trustee, filed.

Aug. 20, 1937. Account of Gano Dunn, Trustee, filed.

Sept. 18, 1937. Account of Gano Dunn, Trustee, filed.

Nov. 20, 1937. Account of Gano Dunn, Trustee, filed.

Feby. 7, 1938. Report of Gano Dunn, Trustee for semi-annual period, filed.

Mar. 8, 1938. Account of Gano Dunn, Trustee, filed.

May 20, 1938. Account of Gano Dunn, Trustee, filed.

Aug. 11, 1938. Report of Gano Dunn, Trustee, for semi-annual period, filed.

Sept. 21, 1938. Account of Gano Dunn, Trustee, filed.

Dec. 9, 1938. Account of Gano Dunn, Trustee, filed.

Dec. 21, 1938. Motion of plaintiff for leave to file supplemental complaint, with complaint annexed, filed; same day order setting motion down for hearing on ten days' notice, &c.; same day order filed.

Dec. 23, 1938. Marshal returns on copy of notice of motion for leave to file supplemental complaint "Served", etc.; same day copy filed.

Jany. 12, 1939. Order granting leave to file supplemental complaint; same day order and supplemental complaint filed.

[fol. 5] Jany. 12, 1939. Daniel O. Hastings Esq. appears as solicitor for Columbia Oil & Gasoline Corporation; same day praecipe filed.

Jany. 17, 1939. Order granting James M. Malloy, Esq. leave to withdraw as solicitor for Burt R. Bay; same day order filed.

Jany. 31, 1939. Charles A. Munroe appears by Daniel O. Hastings, Esq. his attorney; same day praecipe filed.

Feby. 1, 1939. Stipulation filed; same day order extending time for filing answers, &c.; same day order filed.

Feby. 6, 1939. Motion of Missouri-Kansas Pipe Line Company for leave to intervene, with petition annexed, filed; same day order setting motion for hearing February 10, 1939; same day order filed.

Feby. 7, 1939. Proof of service of motion filed.

Feby. 8, 1939. Order continuing hearing on motion of Missouri-Kansas Pipe Line Company for leave to intervene until February 24, 1939; same day order filed.

Feby. 20, 1939. Stipulation filed; same day order extending time for filing answer, &c.; same day order filed.

Feby. 22, 1939. Report of Gano Dunn, Trustee, filed.

Feby. 24, 1939. Answer of John H. Hillman, Jr. to supplemental complaint filed.

Feby. 24, 1939. Affidavit as to service filed.

Feby. 24, 1939. Hearing on petition of Missouri-Kansas Pipe Line Company for leave to intervene.

Mar. 3, 1939. Account of Gano Dunn, Trustee, filed.

Mar. 16, 1939. Stipulation filed; same day order extending time for filing answer, &c.; same day order filed.

Mar. 29, 1939. Opinion of court filed.

Mar. 30, 1939. Order denying motion of Missouri-Kansas Pipe Line Company for leave to intervene, &c.; same day order filed.

Apr. 3, 1939. Motion of City of Detroit for leave to intervene and file complaint, filed.

Apr. 4, 1939. Stipulation filed; same day order extending time for filing answer, &c.; same day order filed.

[fol. 6] Apr. 22, 1939. Order granting City of Toledo leave to file motion for leave to intervene; same day motion filed.

Apr. 22, 1939. Hearing on motion of City of Detroit for leave to intervene, filed.

Apr. 25, 1939. Motion of defendants filed; same day order extending time for filing answer, &c.; same day order filed.

May 4, 1939. Consent by United States to intervention by City of Detroit and City of Toledo, filed.

May 15, 1939. Answer of Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr. to supplemental complaint filed.

May 15, 1939. Answer of Columbia Oil & Gasoline Corporation and Charles A. Munroe filed.

May 15, 1939. Motion of United States of America to abandon supplemental complaint; same day order setting motion for hearing June 12, 1939; same day order filed.

May 15, 1939. Notice of motion for order vacating consent decree and leave to file amended and supplemental complaint, with motion and proposed amended and supplemental complaint filed.

May 26, 1939. Report of Gano Dunn, Trustee, filed.

June 12, 1939. Hearing on motion of petitioner to vacate consent decree with leave to file amended and supplemental bill.

June 14, 1939. Motion of Hugh M. Morris, Esq. and Ivan Culbertson, Esq. filed; same day order granting leave to withdraw as attorneys for Columbia Oil & Gasoline Corporation; same day order filed.

June 20, 1939. Motion of Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation for approval of plan for modification of consent decree, &c. filed; same day order setting motion for hearing July 10, 1939; same day order filed. (Exit copies.)

June 22, 1939. Opinion of court filed.

[fol. 7] June 22, 1939. Order denying motion by City of Detroit for leave to intervene; same day order filed.

June 22, 1939. Order denying motion by City of Toledo for leave to intervene; same day order filed.

June 26, 1939. Notice of appeal by Missouri-Kansas Pipe Line Company with bond for costs in the sum of Two Hundred and Fifty Dollars ($250.00) with The Aetna Casualty and Surety Company as surety, filed; same day copy of notice mailed to attorneys for plaintiff and defendants.

July 5, 1939. Affidavit of Robert J. Glasser as to service filed.

July 5, 1939. Petition of Missouri-Kansas Pipe Line Company for leave to intervene, filed.

July 10, 1939. Order denying petition of Missouri-Kansas Pipe Line Company for leave to intervene; same day order filed.

July 10, 1939. Order referring motion of defendants with proposed plan for modification of Consent Decree, &c. to William Prickett, Esq. as Special Master; same day order filed. (Exit copy to Special Master.)

July 14, 1939. Notice of appeal by Missouri-Kansas Pipe Line Company filed; same day copy of notice mailed to attorneys for plaintiff and defendants.

July 29, 1939. Bond of Missouri-Kansas Pipe Line Company on appeal in the sum of $250.00 with The Aetna Casualty and Surety Company, as surety, filed.

July 29, 1939. Opinion of William Prickett, Esq. Special Master filed.

July 29, 1939. Summary of plan, findings of act, conclusions of law and recommendations of Special Master and testimony before him filed.

July 29, 1939. Praecipe of Missouri-Kansas Pipe Line Company for transcript of record on appeal from order of March 30, 1939, filed.

July 29, 1939. Praecipe of Missouri-Kansas Pipe Line Company for transcript of record on appeal from order of July 10, 1939, filed.

Aug. 2, 1939. Order extending time for filing transcript of record on appeal from order of March 30, 1939, until August 15, 1939; same day order filed.

[fol. 8] Aug. 5, 1939. Report of William Prickett, Esq. Special Master with papers therein mentioned filed.

Aug. 7, 1939. Objections by Columbia Oil & Gasoline Corporation to report of Special Master filed.

Aug. 7, 1939. Objections by Columbia Gas & Electric Corporation to report of Special Master filed.

Aug. 7, 1939. Objections by United States of America to report of Special Master filed.

Aug. 8, 1939. Objections by Missouri-Kansas Pipe Line Company to report of Special Master filed.

Aug. 8, 1939. Cross praecipe by Columbia Oil & Gasoline Corporation for inclusion of additional matter in record on appeal by Missouri-Kansas Pipe Line Company from order of March 30, 1939, filed.

Aug. 8, 1939. Cross praecipe by Columbia Oil & Gasoline Corporation for inclusion of additional matter in record on appeal by Missouri-Kansas Pipe Line Company from order of July 10, 1939, filed.

Aug. 8, 1939. Cross-praecipe by Columbia Gas & Electric Corporation for inclusion of additional matter in record on appeal by Missouri-Kansas Pipe Line Company from order of March 30, 1939, filed.

Aug. 8, 1939. Cross-praecipe by Columbia Gas & Electric Corporation for inclusion of additional matter in record on appeal by Missouri-Kansas Pipe Line Company from order of July 10, 1939, filed.

Aug. 10, 1939. Transcript of record on appeal from order of March 30, 1939, certified and delivered to Clerk U. S. Circuit Court of Appeals.

Aug. 10, 1939. Transcript of record on appeal from order of July 10, 1939, certified and delivered to Clerk U. S. Circuit Court of Appeals.

Aug. 11, 1939. Affidavits of service of objections of Missouri-Kansas Pipe Line Company to report of Special Master, filed.

Aug. 12, 1939. Objections of City of Detroit to report of Special Master filed.

Aug. 22, 1939. Report of Gano Dunn, Trustee, filed.

Sept. 12, 1939. Report of Gano Dunn, Trustee, filed.

Octo. 20, 1939. Petition of William Prickett, Esq., Special Master, filed; same day order that he be allowed the sum [fol. 9] of $5,000.00 for his services and expenses, &c.; same day order filed.

Octo. 25, 1939. Petition of John H. Hillman, Jr., with notice of motion and stipulation filed, same day order modifying consent decree, &c.; same day order filed.

Nov. 1, 1939. Petition of Missouri-Kansas Pipe Line Company filed; same day order postponing hearing of

exceptions to report of Special Master; same day order filed.

Nov. 30, 1939. Report of Gano Dunn, Trustee, filed.

Feby. 9, 1940. Report of Gano Dunn, Trustee, filed.

Feby. 27, 1940. Report of Gano Dunn, Trustee, filed.

Mar. 23, 1940. Application of Panhandle Eastern Pipe Line Company to be made a party, &c. filed; same day order setting same down for hearing April 1, 1940, at 10:00 o'clock A. M.; same day order filed.

Mar. 29, 1940. Motion of Columbia Gas & Electric Corporation to dismiss application of Panhandle Eastern Pipe Line Company, with affidavits of Joe D. Creveling, Gano Dunn and D. M. Wilson, filed.

Mar. 29, 1940. Motion of Columbia Oil & Gasoline Corporation to dismiss application of Panhandle Eastern Pipe Line Company, with affidavits of Joe D. Creveling, Gano Dunn and Don M. Wilson, filed.

Apr. 1, 1940. Hearing on motions to dismiss application of Panhandle Eastern Pipe Line Company.

Apr. 6, 1940. Opinion of court filed.

Apr. 16, 1940. Application of Missouri-Kansas Pipe Line Company to become a party, &c. filed; same day order setting same down for hearing April 23, 1940 at 10:00 o'clock A. M.; same day order filed.

Apr. 23, 1940. Order denying application of Panhandle Eastern Pipe Line Company for leave to become a party, &c.; same day order filed.

Apr. 23, 1940. Hearing on application of Missouri-Kansas Pipe Line Company to become party, &c.; same day order denying application; same day order filed.

[fol. 10] Apr. 23, 1940. Hearing on exceptions to report of William Prickett, Special Master.

May 27, 1940. Account of Gano Dunn, Trustee, filed.

May 31, 1940. Mandate of U. S. Circuit Court of Appeals for Third Circuit dismissing appeal from order of March 30, 1939 and that Missouri-Kansas Pipe Line Co. recover against Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, the sum of $1665.23 costs, filed.

May 31, 1940. Mandate of U. S. Circuit Court of Appeals for Third Circuit dismissing appeal from order of July 10, 1939, and that Columbia Gas & Electric Corporation, et al. recover against Missouri-Kansas Pipe Line Company the sum of $20.00 costs, filed.

June 14, 1940. Petition of Missouri-Kansas Pipe Line Company for appeal with assignment of errors and jurisdiction statement filed; same day order allowing appeal, bond in the sum of $250.00; same day order filed, and citation issued.

June 14, 1940. Petition of Panhandle Eastern Pipe Line Company for appeal with assignments of errors and jurisdiction statement filed; same day order allowing appeal, bond in the sum of $250.00; same day order filed, and citation issued.

June 18, 1940. Missouri-Kansas Pipe Line Company deposits in registry the sum of $250.00 in lieu of bond on appeal.

June 18, 1940. Panhandle Eastern Pipe Line Company deposits in registry the sum of $250.00 in lieu of bond on appeal.

June 18, 1940. Notice of allowance of appeal of Missouri-Kansas Pipe Line Company, filed.

June 18, 1940. Notice of allowance of appeal of Panhandle Eastern Pipe Line Company filed.

June 18, 1940. Praecipe of Missouri-Kansas Pipe Line Company for transcript of record on appeal, filed.

June 18, 1940. Praecipe of Panhandle Eastern Pipe Line Company for transcript of record on appeal, filed.

[fol. 11] June 18, 1940. Citation on appeal of Missouri-Kansas Pipe Line Company with acceptance of service by attorneys for appellees endorsed thereon, filed.

June 18, 1940. Citation on appeal of Panhandle Eastern Pipe Line Company, with acceptance of service by attorneys for appellees endorsed thereon, filed.

June 28, 1940. Counter-praecipe of Columbia Gas & Electric Corporation on appeal of Missouri-Kansas Pipe Line Company, filed.

June 28, 1940. Counter-praecipe of Columbia Gas & Electric Corporation on appeal of Panhandle Eastern Pipe Line Company, filed.

June 28, 1940. Counter-praecipe of Columbia Oil & Gasoline Corporation on appeal of Missouri-Kansas Pipe Line Company, filed.

June 28, 1940. Counter-praecipe of Columbia Oil & Gasoline Corporation on appeal of Panhandle Eastern Pipe Line Company, filed.

July 1, 1940. Amendment to praecipe of Missouri-Kansas Pipe Line Company, filed.

July 1, 1940. Amendment to praecipe of Panhandle Eastern Pipe Line Company, filed.

July 6, 1940. Amendment to praecipe of Missouri-Kansas Pipe Line Company, filed.

July 6, 1940. Amendment to praecipe of Panhandle Eastern Pipe Line Company, filed.

July 13, 1940. Amendment to counter-praecipe of Columbia Gas & Electric Corporation on appeal of Missouri-Kansas Pipe Line Company, filed.

July 13, 1940. Amendment to counter-praecipe of Columbia Gas & Electric Corporation on appeal of Panhandle Eastern Pipe Line Company, filed.

July 16, 1940. Amendment to counter-praecipe of Columbia Oil & Gasoline Corporation on appeal of Missouri-Kansas Pipe Line Company, filed.

July 16, 1940. Amendment to counter-praecipe of Columbia Oil & Gasoline Corporation on appeal of Panhandle Eastern Pipe Line Company, filed.

[fols. 12-13] [File endorsement omitted]

[fol. 14] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

In Equity No. 1099

UNITED STATES OF AMERICA, Petitioner,

v.

COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, George H. Howard, Phillip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay, and John H. Hillman, Jr., Defendants

AMENDED AND SUPPLEMENTAL PETITION—Filed October 30, 1935

The United States of America, by John J. Morris, Jr., United States Attorney for the District of Delaware, acting under direction of the Attorney General, brings this proceeding in equity against the defendants above-named,

and for an amended and supplemental petition alleges upon information and belief as follows:

For a First Cause of Action

1. That Columbia Gas & Electric Corporation is a corporation organized and existing under the laws of Delaware.

[fol. 15] 2. That Columbia Oil & Gasoline Corporation is a corporation organized and existing under the laws of Delaware.

3. That each of said corporate defendants has a principal office and place of business at 61 Broadway, in the City of New York, New York.

4. That George H. Howard is a resident of the City of New York, New York.

5. That Phillip G. Gossler is a resident of the City of New York, New York.

6. That Charles A. Munroe is a resident of the City of Chicago, Illinois.

7. That Thomas R. Weymouth is a resident of the City of Pittsburgh, Pennsylvania.

8. That Thomas B. Gregory is a resident of the City of Pittsburgh, Pennsylvania.

9. That Edward Reynolds, Jr., is a resident of the City of New York, New York.

10. That Burt R. Bay is a resident of the City of Kansas City, Missouri.

11. That John H. Hillman, Jr., is a resident of the City of Pittsburgh, Pennsylvania.

12. That the above-named individual defendants are citizens of the United States and have been either voting trustees of the common stock of Panhandle Eastern Pipe Line Company (a corporation of the State of Delaware), or officers and directors of said corporation, and the individual defendants except Burt R. Bay and John H. Hillman, Jr., have been officers and directors of Columbia Gas & Electric [fol. 16] Corporation and Columbia Oil and Gasoline Corporation.

13. That Columbia Gas & Electric Corporation is a holding company owning, controlling, and dominating the operations of more than 70 subsidiaries. These subsidiaries are divided into 7 groups, as follows:

The Charleston (West Virginia) group which produces, transports, and distributes natural gas in 79 cities and towns in West Virginia and Ohio.

The Cincinnati (Ohio) group which produces, transports, and distributes electricity, natural gas, and manufactured gas in 142 cities and towns in Ohio and 17 cities and towns in Kentucky.

The Columbus (Ohio) group which produces, transports, and sells natural gas both at wholesale and retail in 277 cities and towns in the States of Ohio and Indiana.

The Dayton (Ohio) group which produces, transports, and distributes electricity and natural gas in 127 cities and towns in the State of Ohio.

The Pittsburgh (Pennsylvania) group which produces, transports, and distributes, both at wholesale and retail, natural gas in 256 cities and towns in the States of Pennsylvania, West Virginia, and Ohio.

The Binghamton (New York) group which produces, transports, and distributes artificial, mixed, and natural gas in Binghamton, New York, and several neighboring communities.

[fol. 17] The Seaboard group the corporate members of which each operate a section of the gas transmission pipe line running from Boldman, Kentucky, through Kentucky, West Virginia, Virginia, and Maryland to the Maryland-Pennsylvania State Line near Conowingo, Maryland.

Columbia Gas and Electric Corporation has conducted the affairs, business, and commerce of said subsidiary corporations as one enterprise, and it and said subsidiaries are sometimes hereinafter referred to as the Columbia System.

14. That Columbia Oil and Gasoline Corporation is a corporation of the State of Delaware, organized by Columbia Gas and Electric Corporation to hold the oil, gasoline, and gas-producing properties of the Columbia System. All of its first preferred stock and all of its second preferred stock is owned by Columbia Gas and Electric Corporation. All of its common stock has been deposited under a Voting

Trust Agreement and Voting Trust Certificates have been distributed to holders of the common stock of Columbia Gas and Electric Corporation.

15. That the field of operations of the Columbia System, so far as the production, transmission, and distribution of natural gas is concerned, extends from Muncie, in the State of Indiana, through the States of Ohio, Kentucky, West Virginia, and Pennsylvania to Washington, in the District of Columbia, and other cities on the Eastern Seaboard. [fol. 18] Its greatest concentration of operations is in the State of Ohio, in a large portion of which State it has for many years past enjoyed a virtual monopoly in the sales and distribution of natural, mixed, and artificial gas.

16. That Missouri-Kansas Pipe Line Company, hereinafter sometimes referred to as Mokan, was organized under the laws of the State of Delaware in 1928 for the purpose of producing, transporting, distributing, and selling natural gas, both at wholesale and retail, in the States of Kansas, Missouri, Illinois, Kentucky, Indiana, Michigan, and Ohio. By 1930 it had acquired vast gas-producing acreage in the Panhandle of Texas and the Hugoton field of Kansas at prices that would have enabled it to market such gas on a favorable competitive basis with any person, firm, or corporation then or now engaged in the sale and distribution of natural gas in said States of Kansas, Missouri, Illinois, Indiana, Kentucky, Michigan, and Ohio.

In 1929 Mokan caused the organization of Panhandle Eastern Pipe Line Company under the laws of the State of Delaware and became the owner of the entire capital stock of said corporation. Said Panhandle Eastern Pipe Line Company was organized for the purpose of building and operating a natural-gas pipe line from said gas-producing territories of the Texas Panhandle and Kansas through the States of Oklahoma, Kansas, Missouri, Illinois, and Indi- [fol. 19] ana, up to the City of Indianapolis. It was the intention of Missouri-Kansas Pipe Line Company to purchase a large part of the natural gas so transmitted by said Panhandle Eastern Pipe Line Company for resale in the territories served and to be served by said Missouri-Kansas Pipe Line Company. Plans for the construction of said Panhandle Eastern pipe line included extensions to the City of Detroit, Michigan, and to Dayton and Cincinnati in Ohio, upon its completion to the City of Indianapolis.

17. That since early in June 1930 the defendants have been and now are engaged in a combination and conspiracy to restrain trade and commerce in natural gas among the States of Kansas, Missouri, Illinois, Indiana, Michigan, and Ohio and to monopolize and attempt to monopolize such trade and commerce in said natural gas in the States of Indiana, Michigan, and Ohio, in violation of the Act of Congress approved July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies." The specific purposes and objects of said combination and conspiracy were and are—

To prevent, if possible, the construction of the natural-gas pipe line described in Article 15 hereof, and, failing that, to obtain control of the management and operation of said Panhandle Eastern Pipe Line Company and its subsidiaries, and, having obtained such control, so to conduct its activities and affairs as to (a) prevent said Missouri-Kansas [fol. 20] Pipe Line Company from obtaining its requirements of natural gas from said Panhandle Eastern Pipe Line Company; (b) prevent said Panhandle Eastern Pipe Line Company from making available, either directly or indirectly, its large supplies of natural gas in such manner as to compete with the Columbia System or endanger its actual or contemplated monopoly in the distribution and sale of natural gas in said States of Indiana, Michigan, and Ohio; and finally (c) bring said Panhandle Eastern Pipe Line Company to such a financial condition that the corporate defendants herein might be enabled to acquire the complete domination and ownership of its physical assets and properties, either by foreclosure of the mortgage securing its bonded indebtedness or otherwise, as hereinafter more particularly described.

The defendants herein have carried out, or attempted to carry out, the purposes and objects of said combination and conspiracy in the manner and by the means hereinafter set forth.

18. That on or about June 20, 1930, the defendant Columbia Oil and Gasoline Corporation entered into an agreement with Mokan, whereby and whereunder said Columbia Oil & Gasoline Corporation acquired the exclusive right to purchase one-half of the outstanding capital stock of said Panhandle Eastern Pipe Line Company and thereafter to maintain its 50% ownership in said company by having the

[fol. 21] right, likewise exclusive, to purchase one-half of such additional stock or evidences of indebtedness as might be issued by said company. A copy of said agreement is attached hereto as Exhibit A and made a part hereof. Said agreement was by its terms to expire on August 5, 1930. At the request of the corporate defendants herein and as a means of carrying out said combination and conspiracy, said expiration date was twice extended by Mokan for periods of 15 days, and on the final date, to wit, September 5, 1930, the defendant Columbia Oil & Gasoline Corporation refused to go forward with said agreement, with the intent by so doing of forcing Mokan into receivership and thus preventing the completion of said Panhandle Eastern Pipe Line.

19. That on or about September 8, 1930, Mokan entered into a written agreement with Central Public Service Corporation, a corporation of the State of Maryland, whereby and whereunder it was provided that said Central Public Service Corporation would acquire a substantial interest in the Panhandle Eastern Pipe Line Company and would arrange an immediate credit of $10,000,000 for Mokan. Pursuant to said agreement, Mokan did borrow for its corporate needs the sum of $3,000,000 and thereby avoided a receivership. A copy of said agreement is hereto attached, marked Exhibit B, and made a part hereof. On September 12, 1930, the individual defendants Gossler, Munroe, and Howard, as a means of carrying out the combination and [fol. 22] conspiracy hereinbefore described, attempted to dissuade said Central Public Service Corporation from going forward with said agreement and from assisting Mokan as therein provided.

20. That having failed in their efforts to persuade Central Public Service Corporation to abandon its agreement with Mokan, the corporate defendants and certain of the individual defendants attempted to, and succeeded in, inducing Mokan to abandon its agreement with Central Public Service Corporation and to enter into a new agreement with the defendant Columbia Oil & Gasoline Corporation and the National City Company of New York. Said new agreement was dated September 17, 1930, and a copy thereof, marked Exhibit C, is hereto attached and made a part hereof. Said agreement contained, among others, the following provisions:

IV. The Pipe Line Company (Mokan) agrees with the parties hereto as follows:

(b) That it will sell and deliver to Columbia 5,000 shares of Common Stock of the Panhandle Company (being one-half of its total stock outstanding) at the price per share determined as provided in Article VIII hereof.

(e) The Pipe Line Company either directly or through its present and/or future subsidiaries will enter into gas purchase contracts with the Panhandle Company upon substantially the following terms:

(1) An excess capacity contract for the purchase up to [fol. 23] 20,000,000 cubic feet of gas per day at 18 cents per M cubic feet, without limit as to time so long as the Panhandle Company has any excess capacity, provided, that if the Panhandle Company can sell all or any gas at a higher price it may reduce proportionately deliveries under this excess capacity contract.

(2) Firm contract, commencing when the Panhandle Company gives notice to the Pipe Line Company and Columbia that it no longer has any excess capacity, for ten years and thereafter with right of cancellation by either party on one year's notice, at the rate of 26½ cents per M cubic feet, deliveries under such contract to be as required by the Pipe Line Company and to aggregate for each year an amount producing at least a 70-per cent annual load factor based on the maximum daily delivery, which maximum shall in no case exceed 20,000,000 cubic feet per day, and after the expiration of one year from the effective date of this firm contract such maximum day shall not exceed the maximum day established during said first year.

(g) The Pipe Line Company will deliver to or on the order of the City Company 200,000 shares of the Pipe Line Company's Common Stock as presently constituted as consideration for the purchase of the Bonds and the arranging of the credits herinafter in Article VI provided for, and will cause the Panhandle Company to sell and deliver to the City Company the entire issue of $20,000,000 aggregate [fol. 24] principal amount, of bonds, above described in Schedule A, for the purchase price paid to the Panhandle Company of $18,000,000, plus accrued interest on the said $20,000,000, aggregate principal amount, of Bonds from

October 1, 1930, to the date of delivery, and to pay the usual expenses in connection with such financing.

V. Columbia agrees with the parties hereto as follows:

(c) That it will cause the Columbia Gas & Electric Corporation, either directly or through its present and/or future subsidiaries to enter into gas-purchase contracts with the Panhandle Company at or near the Indiana-Illinois state line upon substantially the following terms:

(1) An excess-capacity contract for the purchase up to 20,000,000 cubic feet of gas per day at 18 cents per M cubic feet, without limit as to time so long as the Panhandle Company has any excess capacity, provided, that if the Panhandle Company can sell all or any gas at a higher price it may reduce proportionately deliveries under this excess-capacity contract.

(2) Firm contract, commencing when the Panhandle Company gives notice to the Pipe Line Company and Columbia that it no longer has any excess capacity, for ten years and thereafter with right of cancellation by either party on one year's notice, at the rate of 26½ cents per M cubic feet, deliveries under such contract to be as required by Columbia and to aggregate for each year an amount producing [fol. 25] at least a 70-per cent annual load factor based on the maximum daily delivery, which maximum shall in no case exceed 30,000,000 cubic feet per day, and after the expiration of one year from the effective date of this firm contract such maximum day shall not exceed the maximum day established during said first year.

VI. The City Company agrees with the parties hereto:

(a) That it will purchase the said bonds described in paragraph (f) of Article IV and will pay the purchase price therefor on the Closing Date.

VII. The Pipe Line Company and Columbia agree with the parties hereto:

(a) That they will, subject to the provisions of Article V paragraph (b) hereof, advance to the Panhandle Company in equal amounts all cash in excess of that expended or for which liabilities as determined by Arthur Andersen & Co. existed, on August 31, 1930, and of the proceeds of the

Bond issue, necessary to complete the pipe line under construction from Texas to the Indiana-Illinois state line and take therefor notes and common stock in the ratio of $90 in notes and $10 in two shares of common stock as presently constituted, provided that the notes shall be specifically subordinated to the Bonds and shall mature at a date later than the maturity of the Bonds.

(c) That they will cause the Panhandle Company to put the pipe line into commercial operation as soon as practical [fol. 26] after completion and to operate the same at its highest possible efficiency.

XIII. The Pipe Line Company will cause the Panhandle Company to deliver to the City Company a letter signed by the President of the Panhandle Company descriptive of its properties and the project and of the Bonds in reasonable detail and in form satisfactory to the City Company. Columbia will cooperate in the preparation of such letter. From time to time the Pipe Line Company and Columbia will cause the Panhandle Company to furnish the City Company with quarterly statements of operations and balance sheet in reasonable detail.

XIV. If within 15 days after written notice that payment will be required by the Panhandle Company for the completion of its pipe line, either Columbia or the Pipe Line Company shall fail to provide their share of the necessary funds required as provided in Article VII, paragraph (a) or in Article XII hereof, the party not in default may itself provide such funds and shall be entitled to receive from the Panhandle Company therefor the same securities as would have been given to the other party so in default if it had made the advance and the right of the party in default to proceed further with such financing shall terminate.

21. That on or about September 30, 1930, an agreement supplemental to said contract of September 17, 1930, was entered into between Mokan and the defendant Columbia [fol. 27] Oil & Gasoline Corporation. Said agreement is attached hereto, marked Exhibit D, and made a part hereof. By its terms the parties thereto agreed that the entire outstanding capital stock of Panhandle Eastern Pipe Line Company, owned one-half by Mokan and one-half by the defendant Columbia Oil & Gasoline Corporation, was to be

deposited in a Voting Trust, to be administered by three Voting Trustees, of whom Frank P. Parrish, then president of Mokan, was to be one; the defendant Phillip G. Gossler, then president of the defendant Columbia Gas & Electric Corporation, was to be the second; and the defendant George H. Howard, then president of United Corporation, was to be the third. Said agreement of September 30, 1930, likewise provided that the Board of Directors of Panhandle Eastern Pipe Line Company was forthwith to be reconstituted so as to consist of nine members, four of whom were to be nominated by the defendant Columbia Oil & Gasoline Corporation, four by Mokan, and the remaining or ninth director to be the defendant George H. Howard, or a nominee of said United Corporation. The defendants Gossler and Munroe induced Mokan to accept the defendant Howard as such third voting trustee and ninth director by representing that said Howard would act impartially and in the best interests of Panhandle Eastern Pipe Line Company but the selection of the defendant George H. Howard as the third voting trustee, and the ninth director of Panhandle [fol. 28] Eastern Pipe Line Company, was in reality an act done in furtherance of said combination and conspiracy, since at the time of such selection the said George H. Howard was president of United Corporation, which corporation was and is the largest single stockholder in the defendant Columbia Gas & Electric Corporation, and during the period that said George H. Howard served as said voting trustee and director he acted solely in the interests of the corporate defendants herein and for the single purpose of effecting the objects of said combination and conspiracy.

22. That pursuant to the terms of said agreement of September 17, 1930, the defendant Columbia Oil & Gasoline Corporation purchased one-half of the outstanding capital stock of Panhandle Eastern Pipe Line Company and The National City Company purchased its issue of first-mortgage bonds in the total principal amount of $20,000,000. Likewise, pursuant to the terms of said agreement, Mokan caused the president of Panhandle Eastern Pipe Line Company to write to The National City Company a letter descriptive of its properties and project and of the bonds, and said National City Company caused to be prepared numerous drafts of a circular offering said bonds for sale to the public. Prior to any public offering, however, and as a means of carrying out the combination and conspiracy hereinbefore de-

scribed, the corporate defendants herein induced said Na-
[fol. 29] tional City Company to sell said entire issue of bonds to the defendant Columbia Oil & Gasoline Corporation, thus enabling it to acquire a first-mortgage lien upon all of the physical assets and properties of said Panhandle Eastern Pipe Line Company.

23. That as soon as the new Board of Directors of Panhandle Eastern Pipe Line Company had been elected, pursuant to the provisions of said agreement of September 30, 1930, the individual defendants P. G. Gossler, George H. Howard, and C. A. Munroe, who, together with Fred W. Crawford and George W. Crawford, both of whom are now deceased, constituted a majority of said Board, caused the election of new officers to manage and operate the affairs of said Panhandle Eastern Pipe Line Company, none of whom, with the exception of the defendant Burt R. Bay, had previously been identified either with Mokan or with Panhandle Eastern Pipe Line Company, and all of whom, including said defendant Burt R. Bay, were and are responsive to the wishes of the other defendants herein in the management of the operations and affairs of said Panhandle Eastern Pipe Line Company.

24. That early in 1931 it became necessary for the defendant Columbia Oil & Gasoline Corporation and Mokan to contribute additional funds for the completion of said natural-gas pipe line, pursuant to the terms of said agreement of September 17, 1930. For such contributions, Pan-
[fol. 30] handle Eastern Pipe Line Company issued $9,981,000 of its 6% promissory notes due on October 2, 1950, which notes were specifically subordinated to its first-mortgage bonds, hereinbefore described, and increased its outstanding capital stock from 10,000 shares to 229,800 shares. Of said notes and capital stock, the defendant Columbia Oil & Gasoline Corporation and Mokan each received $4,495,500 in notes and 114,900 shares of stock for their respective contributions. To acquire its proportionate share of said Panhandle Eastern notes and common stock it was necessary for Mokan to borrow money. Such borrowing was accomplished in the following manner:

Panhandle Corporation was incorporated under the laws of Maryland, with an authorized capital of 1,000 shares, having a par value of $10 each, all of which said shares were issued to and owned by Mokan in consideration of the

transfer by Mokan to said Panhandle Corporation of all of its stock in Panhandle Eastern Pipe Line Company. Panhandle Corporation then issued its 2-year, 6% collateral trust notes, due March 15, 1933, in the total principal amount of $4,940,000. As collateral for said note issue Mokan pledged its holdings of said Panhandle Eastern Pipe Line Company notes and guaranteed the payment of said Panhandle Corporation notes. Mokan likewise issued its own 2-year, 6% collateral trust notes, in the total principal sum of $1,060,000, which were in turn secured by bonds [fol. 31] of similar principal amount of Kentucky Natural Gas Company (a wholly owned subsidiary of Mokan) and by 90%, or 900 shares, of the outstanding capital stock of Panhandle Corporation.

The financing described hereinbefore enabled Mokan to maintain its 50% interest in Panhandle Eastern Pipe Line Company and was accomplished through the defendant J. H. Hillman, Jr., and Dillon, Read & Company, of New York. Prior to the underwriting of said Panhandle Corporation notes and said Mokan notes, and as a means of carrying out the purposes and objects of said combination and conspiracy, the defendant Phillip G. Gossler attempted to dissuade the defendant Hillman and Dillon, Read & Company from furnishing said financial assistance to Mokan and thereby enabling it to retain its one-half interest in Panhandle Eastern Pipe Line Company. Subsequent to said financing and during April 1931, the defendant Gossler threatened the said defendant Hillman and said Dillon Read & Company that Panhandle Eastern Pipe Line Company would be managed in such manner that it would become bankrupt and the interests represented by the defendant Hillman and Dillon, Read & Company wiped out, unless they prevailed upon Mokan and upon its subsidiary, Kentucky Natural Gas Company, to cease their efforts to sell natural gas from said Panhandle Eastern pipe line in Indianapolis, Indiana, and in Detroit, Michigan.

[fol. 32] 25. That in March 1931, and as a means of carrying out the purposes and objects of said combination and conspiracy, the defendants Gossler, Howard, Munroe, and Gregory, who, together with F. W. Crawford, now deceased, constituted a majority of the Board of Directors of Panhandle Eastern Pipe Line Company, caused said Panhandle Eastern Pipe Line Company to take appropriate corporate

action by which the mortgage trust indenture between Panhandle Eastern Pipe Line Company and City Bank Farmers Trust Company, under which said first-mortgage bonds had been issued, was supplemented and amended so as to provide, in substance, that a failure to pay any installment of interest upon the 6% promissory notes of said Panhandle Eastern Pipe Line Company, hereinbefore described, would constitute an act of default under said mortgage trust indenture and would automatically cause the entire issue of bonds as aforesaid to become in default.

26. That as the construction of said Panhandle Eastern pipe line neared completion, Mokan demanded its gas-purchase contract from Panhandle Eastern Pipe Line Company, as provided in Article IV (e) of said agreement of September 17, 1930; that said demand was formally presented at a meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 26, 1931, and that, in response thereto, said F. W. Crawford, who was then president of Panhandle Eastern Pipe Line Company, and [fol. 33] likewise an officer and director of the defendant Columbia Gas & Electric Corporation, read a statement in behalf of Panhandle Eastern Pipe Line Company that it would not sell gas to Mokan unless such gas would be resold by Mokan only in southwestern Indiana and south to Nashville, Tennessee, which said statement is incorporated in the minutes of said meeting; that upon the refusal of Mokan to accept such conditions the resolution calling for the preparation of said gas-purchase contract was laid on the table by the votes of said F. W. Crawford, now deceased, and of the defendants Howard, Munroe, Gregory, and Reynolds, who then constituted a majority of said Board; that subsequent to said meeting of May 26, 1931, and on June 5, 1931, a resolution was passed by the Board of Directors of Panhandle Eastern Pipe Line Company authorizing the officers and counsel of said corporation to prepare and submit a form of contract for the purchase of gas by Mokan in accordance with the provisions of said agreement of September 17, 1930; that despite the passage of said resolution and by reason of the acts of the individual defendants, including George H. Howard, who have been officers and directors of Panhandle Eastern Pipe Line Company, in furtherance of said combination and conspiracy, no such gas-purchase contract, or form thereof, has ever

been submitted either to Missouri-Kansas Pipe Line Company or to its receivers, nor has Missouri-Kansas Pipe Line Company or its receivers ever been able to purchase natural [fol. 34] gas in any quantity from said Panhandle Eastern Pipe Line Company. That since the completion of the Panhandle Eastern pipe line, and as a means of effecting the purposes and objects of said combination and conspiracy, the individual defendants, as officers and directors of Panhandle Eastern Pipe Line Company, have failed and neglected to make any effort to force the defendant Columbia Oil & Gasoline Corporation to carry out the provisions of Article V (c) of said agreement of September 17, 1930, looking to the sale of a large quantity of natural gas by Panhandle Eastern Pipe Line Company to the defendant Columbia Gas & Electric Corporation or its subsidiaries; that actual purchases of gas from Panhandle Eastern Pipe Line Company by the defendant Columbia Gas & Electric Corporation, and/or its subsidiaries, since the completion of said pipe line in November 1931, have been much less than those provided for in said agreement of September 17, 1930, and greatly less than the amount that could have been purchased and used by the Columbia System.

27. That by reason of its inability to purchase gas for resale from Panhandle Eastern Pipe Line Company, and because of the heavy obligations assumed in raising its share of the funds necessary to complete said Panhandle Eastern pipe line, Mokan became financially embarrassed, and in March 1932 receivers of its property and assets were appointed by the Court of Chancery of the State of Dela- [fol. 35] ware, in and for New Castle County. By reason of said receivership, the defendant, J. H. Hillman, Jr., became entitled to nominate the four directors of Panhandle Eastern Pipe Line Company allotted to Mokan by said agreement of September 30, 1930, and said Hillman and three individuals nominated by him have acted as directors of Panhandle Eastern Pipe Line Company continuously since the appointment of said receivers. That as a result of a default in payment of said Mokan collateral trust notes described in Article 24 hereof, the said Hillman and his associates in February 1933 became the owners of 750 of the 1,000 outstanding shares of Panhandle Corporation, which corporation owned one-half of the outstanding capital stock of Panhandle Eastern Pipe Line Company, and through his domination of Panhandle Corporation the de-

fendant Hillman has been and now is in position to assist in carrying out the objects and purposes of said combination and conspiracy in the manner hereinafter described. That said Hillman and his nominees upon said Panhandle Eastern Board have acted in concert with the other individual defendants in so conducting the affairs of Panhandle Eastern Pipe Line Company as to carry out the purposes and objects of said combination and conspiracy.

28. That despite the covenant contained in Article VII (c) of said agreement of September 17, 1930, and as a means of carrying out the objects of said combination and con- [fol. 36] spiracy, the defendants not only attempted to and did prevent Missouri-Kansas Pipe Line Company from selling natural gas from said Panhandle Eastern line in large quantities to industrial users in the City of Indianapolis, Indiana, but also have caused said Panhandle Eastern Pipe Line Company to neglect and reject many opportunities to sell its natural gas to prospective customers in Kansas City and St Louis, in Detroit, and in smaller communities in the States of Kansas and Missouri.

29. That the acts of the individual defendants, as officers, and a majority of the directors of Panhandle Eastern Pipe Line Company, in refusing to permit said Panhandle Eastern Pipe Line Company to sell any of its natural gas to Mokan, in failing and neglecting to force the defendant Columbia Oil & Gasoline Corporation to cause the defendant Columbia Gas & Electric Corporation and/or its subsidiaries to purchase natural gas from Panhandle Eastern Pipe Line Company in the quantities provided for in said agreement of September 17, 1930, and in preventing Panhandle Eastern Pipe Line Company from taking advantage of its opportunities to sell its natural gas to prospective purchasers in Kansas City, St. Louis, Detroit, and said smaller communities in Kansas and Missouri, brought the financial condition of Panhandle Eastern Pipe Line Company to a place where said company was represented to be unable to [fol. 37] pay the interest installment due on March 2, 1934, on its said 6% promissory notes. Failure to pay said interest installment, or any other installment of interest, on said Panhandle Eastern notes would constitute an act of default under the mortgage trust indenture, as amended, under which the bonds of Panhandle Eastern Pipe Line Company had been issued; that as a result of this situation,

and as a further means of carrying out the purposes of said combination and conspiracy, the individual defendants Hillman, Munroe, Reynolds, Gregory, and Weymouth and the corporate defendant, Columbia Oil & Gasoline Corporation, in March 1934, caused to be presented to said Chancery Court of the State of Delaware a so-called "Plan of Reorganization", which was composed of four documents entitled, respectively:

Letter dated March 14, 1934, of Panhandle Corporation to holders of its 2-year, 6% collateral trust notes.

Offer of Exchange, dated March 12, 1934, of Panhandle Corporation to holders of its 2-year, 6% collateral trust notes.

Plan of Readjustment of Funded Debt and Capitalization, dated March 12, 1934 of Panhandle Eastern Pipe Line Company.

Agreement, dated March 12, 1934, between Columbia Oil & Gasoline Corporation and Panhandle Corporation.

Copies of said documents in one volume are attached hereto as Exhibit E and made a part hereof. Under said plan holders of Panhandle Corporation notes would have [fol. 38] received modified Panhandle Eastern bonds in the ratio of $750 of bonds for each $1,000 of Panhandle Corporation notes. Panhandle Corporation would be dissolved. Panhandle Eastern notes would be reduced from $9,891,000 face amount to $1,600,000, and the defendant Columbia Oil & Gasoline Corporation would have acquired the remaining 50% of the outstanding capital stock of Panhandle Eastern Pipe Line Company that had been transferred by Mokan to Panhandle Corporation, as aforesaid. Said plan was submitted to said Chancery Court of said State of Delaware by reason of the fact that the defendant Columbia Oil & Gasoline Corporation had imposed the following conditions upon its participation therein:

3. Columbia Oil shall not be subject to any obligation or liability hereunder, nor shall any assent which Columbia Oil may give to the Eastern Plan become effective or binding unless—

(a) Panhandle and its stockholders, including the Mokan Receivers or their respective successors, such Receivers acting with the approval of the Court of Chancery of the State

of Delaware, shall execute and deliver to Columbia Oil, Columbia Gas & Electric Corporation (a Delaware corporation) and their respective subsidiaries and the past and present officers and directors of said corporation, and to Eastern and its present officers and directors and to such of its past officers and directors as were nominees of Colum-
[fol. 39] bia Oil, good and sufficient releases (in form satisfactory to Columbia Oil) of all claims which Panhandle, its stockholders, the Mokan Receivers or Missouri-Kansas Pipe Line Company or any of them may have against said corporations or said officers or directors or any of them (other than claims under or pursuant to this agreement and/or the Eastern Plan);

(b) The Mokan Receivers or their respective successors shall, with the approval of said Court of Chancery enter into an agreement with Columbia Oil, Columbia Gas & Electric Corporation, and Eastern for the cancellation of all rights and obligations of Columbia Oil, Columbia Gas & Electric Corporation, Eastern and Missouri-Kansas Pipe Line Company, and the Mokan Receivers for the purchase or sale of gas or the execution of gas contracts or other rights or obligations, arising under a certain agreement, dated September 17, 1930, between Missouri-Kansas Pipe Line Company, The National City Company of New York, and Columbia Oil (including all modifications of said agreement);

That subsequent to the filing of the petition herein and on or about the 29th day of March 1935 the Chancellor of said Chancery Court of said State of Delaware, in a written opinion, refused to approve said so-called "Plan of Reorganization."

30. That thereafter, to wit, on or about the 19th day of June 1935, during the pendency of this suit, and as a means
[fol. 40] of carrying out the objects and purposes of said combination and conspiracy, the defendant Columbia Oil & Gasoline Corporation made a so-called "Offer of Exchange, dated June 19, 1935, of Columbia Oil & Gasoline Corporation to holders of 2-year, 6% collateral trust notes of Panhandle Corporation", and the individual defendants herein Munroe, Hillman, Reynolds, Gregory, and Weymouth, as a majority of the Board of Directors of Panhandle Eastern

Pipe Line Company, caused to be adopted a so-called "Revised Plan of Readjustment of Funded Debt and Capitalization, dated June 19, 1935, of Panhandle Eastern Pipe Line Company." Copies of said "Offer" and "Plan" in one cover are hereto attached as Exhibit F and made a part hereof. Said "Offer" and "Plan" are not dependent upon the consent or approval of said Chancery Court of Delaware, and if carried out will result in ownership by the defendant Columbia Oil & Gasoline Corporation of the entire funded debt of Panhandle Corporation now in default and guaranteed by Mokan, as well as ownership of three-fourths of the outstanding capital stock of said Panhandle Corporation, which company, in turn, owns the 50% interest in Panhandle Eastern Pipe Line Company originally owned by Mokan.

31. That by reason of the continued default in interest payments upon said Panhandle Eastern notes, brought about by the defendants as a means of carrying out said [fol. 41] combination and conspiracy in the manner hereinbefore described, the defendant Columbia Oil & Gasoline Corporation is in a position to, and will, unless restrained by the order of this Honorable Court, either obtain ownership of 100% of the outstanding capital stock of Panhandle Eastern Pipe Line Company and retain ownership of the greater part of the funded debt of said corporation by the carrying into effect of said "Offer" and "Plan" of June 19, 1935, or foreclose on the mortgage trust indenture, as amended, under which said Panhandle Eastern bonds were issued, and thus secure the physical properties and assets of said Panhandle Eastern Pipe Line Company.

32. That the effect of the acts of the defendants in furtherance of said combination and conspiracy, as hereinbefore set forth, has been to exclude said Missouri-Kansas Pipe Line Company from engaging in commerce in natural gas in the States of Michigan and Ohio and in all of the State of Indiana except the southwestern portion thereof, to restrain and prevent said Panhandle Eastern Pipe Line Company from freely and independently engaging in commerce in natural gas in said States of Kansas, Missouri, Illinois, Indiana, Michigan, and Ohio, and from competing in any manner with the corporate defendants and their subsidiaries, and from endangering by such free and in-

dividual action the actual and contemplated monopoly in the transmission, distribution, and sale of natural and mixed [fol. 42] gas of said corporate defendants and their subsidiaries in said States of Ohio, Michigan, and Indiana, in violation of said Act of Congress approved July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies."

For a Second Separate and Distinct Cause of Action

33. Petitioner realleges and incorporates as though fully set forth herein, the allegations contained in paragraphs numbered 2, 13, 14, 15, 16, 20, 22, 26, 28, 31, and 32 hereof, and further alleges that the effect of the acquisition by the defendant Columbia Oil & Gasoline Corporation of 50% of the outstanding capital stock of Panhandle Eastern Pipe Line Company has been to substantially lessen competition between said Columbia Oil & Gasoline Corporation and the companies comprising the Columbia System, on the one hand, and said Panhandle Eastern Pipe Line Company, on the other, to restrain commerce in natural gas in the States of Kansas, Missouri, Illinois, Indiana, Michigan, and Ohio, and to tend to create a monopoly in such natural gas in the States of Ohio, Indiana, and Michigan, in violation of an Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes."

34. That the acquisition by the defendant, Columbia Oil & Gasoline Corporation, directly or indirectly, of the re- [fol. 43] maining 50% of the outstanding capital stock of Panhandle Eastern Pipe Line Company, as contemplated by said "Offer" and "Revised Plan", would be to substantially lessen competition between said Columbia Oil & Gasoline Corporation and the companies comprising the Columbia System, on the one hand, and said Panhandle Eastern Pipe Line Company, on the other, to restrain commerce in natural gas in said States of Kansas, Missouri, Illinois, Indiana, Michigan, and Ohio, and to tend to create a monopoly in such natural gas in said States of Indiana, Michigan, and Ohio in violation of an Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes."

Prayer

Wherefore petitioner prays:

1. That writs of subpoena issue, directed to each and every defendant, commanding it, or him, to appear herein and answer the allegations contained in this amended and supplemental petition, and to abide by and perform such orders and decrees as the Court may make in the premises.

2. That the Court adjudge and decree that the defendants herein have been and now are engaged in a combination and conspiracy to restrain commerce in natural gas among the several States, and to monopolize, or attempt to monopolize, such commerce in natural gas in the manner and by the means set forth herein, in violation of the Act of Congress [fol. 44] approved July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies."

3. That the acquisition of 50% of the outstanding capital stock of Panhandle Eastern Pipe Line Company be adjudged a violation of the Act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes."

4. That the proposed acquisition by the defendants herein of the remaining 50% of the outstanding capital stock of Panhandle Eastern Pipe Line Company, in accordance with the terms and provisions of said "Offer of Exchange" and "Revised Plan" of June 19, 1935, be restrained by order of this Court as a further violation of said Act of Congress approved October 15, 1914, and entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes."

5. That the defendants, their officers, agents, employees, and each and every one of them, be perpetually enjoined, individually and collectively, from further engaging in the aforesaid conspiracy, or any other of like character or effect, from further employing either, any, or all of the above-described means for effectuating said conspiracy, from further exercising any dominion or control over Panhandle Eastern Pipe Line Company, and from further restraining

or interfering in any manner with the free and independent [fol. 45] action of Panhandle Eastern Pipe Line Company in the production, transportation, or sale and delivery of natural gas to any person or corporation, or in and to any section or community in the United States.

6. That Columbia Oil & Gasoline Corporation be required to divest itself of all of the stock and bonds of Panhandle Eastern Pipe Line Company now owned and hereafter acquired by it.

7. That the defendants, their officers, agents, employees, and all persons and corporations acting on their behalf, be enjoined, restrained, and prohibited from acquiring, receiving, holding, voting, or in any manner acting as the owners of the whole or any part of the stock, bonds, other share capital, property, or assets of Panhandle Eastern Pipe Line Company.

8. That the petitioner have such other and further relief as may to the Court seem proper.

John J. Morris, Jr., United States Attorney for the District of Delaware; Stanley Reed, Acting Attorney General of the United States; John Dickinson, Assistant Attorney General; Carl McFarland, Special Assistant to the Attorney General; Berkeley W. Henderson, Special Assistant to the Attorney General; Morris R. Clark, Special Assistant to the Attorney General.

[fol. 46] EXHIBIT "A" TO PETITION

Agreement, dated June 20, 1930, between Missouri-Kansas Pipe Line Company, a Delaware Corporation (hereinafter called the Pipe Line Company), and Columbia Oil and Gasoline Corporation, a Delaware Corporation (hereinafter called Columbia).

The Pipe Line Company makes the following representations as to its property and business on the faith of which Columbia has entered into this Agreement.

1. The Pipe Line Company is a corporation validly organized and existing under the laws of Delaware with an authorized capital stock of 5,000,000 shares of Common

Stock of the par value of $5 each, and 5,000,000 shares of Class B stock of the par value of $1 each. Of said stock, 1,627,500 shares of Common Stock and no more, are issued. A statement showing the exact number of shares of common stock presently outstanding will be furnished by the Pipe Line Company to Columbia within 15 days after the execution of this Agreement. 1,598,918 shares of class B Stock have been issued and are deposited under a voting-trust agreement. Rights to purchase voting-trust certificates to be issued pursuant to such voting-trust agreement, have been afforded to holders of the common stock, share for share. Such rights expire June 25, 1930. The Pipe Line Company has no preferred or other class of stock except as above stated and no funded indebtedness.

[fol. 47] 2. Attached hereto as Schedule A is a consolidated balance sheet as of March 31, 1930, of the Pipe Line Company and its subsidiaries, except Panhandle Eastern Pipe Line Company (hereinafter called the Panhandle Company), which correctly sets forth its assets and liabilities as of that date. Correct profit and loss statements by years of the operations of the Pipe Line Company from the date of its organization to said date of March 31, 1930, will be furnished by the Pipe Line Company to Columbia within 15 days of the execution hereof. Any changes of substance in said balance sheet since that date, other than changes incident to the current course of business, will be notified by the Pipe Line Company to Columbia likewise within 15 days from the execution hereof.

3. Panhandle-Eastern Pipe Line Company (hereinafter called the Panhandle Company) is a corporation of the State of Delaware, all the capital stock and all the indebtedness of which, except indebtedness for current construction and material costs, gas leases, and the like, are owned by the Pipe Line Company or which the Pipe Line Company will take immediate steps to acquire. The Pipe Line Company will also take immediate steps to cancel any options or contracts which may exist with respect to such stock. Attached hereto as Schedule B is a copy of the balance sheet of the Panhandle Company as of April 30, 1930, which correctly sets forth its assets and liabilities as of that date. Any substantial changes in said balance sheet since said date other than changes incident to the current course of business will be notified by the Pipe Line Company to Columbia likewise.

within 15 days from the execution hereof. The total amount [fol. 48] of stock of the Panhandle Company authorized is 15,000 shares of preferred stock having a par value of $100.00 per share and 10,000 shares of common stock without par value. All of the shares of preferred stock are held in the Treasury of the Panhandle Company and will not be reissued. There are outstanding, as of the present date, 10,000 shares of the common stock of the Panhandle Company; and all the outstanding indebtedness of the Panhandle Company, except indebtedness for current construction and material costs, gas leases, and the like, is owned by the Pipe Line Company and represents in general advances made to the Panhandle Company by the Pipe Line Company for the acquisition and construction of its properties. The exact amount of the indebtedness so owned by the Pipe Line Company will be furnished to Columbia by the Pipe Line Company within 15 days after the execution of this agreement.

4. In addition to owning the stock and indebtedness of the Panhandle Company, the Pipe Line Company also owns all the stock and indebtedness (except indebtedness for current operations) of the following subsidiary companies, as follows:

Name of corporation	State of incorporation	Amount of stock owned
Kentucky Nat'l Gas Co.	Delaware	1,000 shs. pfd. 511,000 " com.
Missouri-Kansas Gas Co.	"	1,000 " com.
Central States Gas Utilities Co.	Illinois	100 " "
Indiana-Kentucky Nat'l Gas Co.	Indiana	1,000 " "

A statement showing the amount of indebtedness of the above-named companies to the Pipe Line Company will be furnished by the Pipe Line Company to Columbia within [fol. 49] 15 days after the execution of this agreement. The Pipe Line Company also owns less than all of the outstanding stock of the following companies:

Name of corporation	State of incorporation	Amount of stock owned
Stayes Drilling Company	Illinois	510 shs. common (51%).
J. D. Judd & Company	Delaware	255 " " (51%).
Shale Gas Corporation	"	510 " " (51%).

A statement showing the amount of indebtedness of the above-named companies to the Pipe Line Company will be furnished by the Pipe Line Company to Columbia within 15 days after the execution of this agreement. Copies of the

balance sheets of the above companies as of the latest available date, and profit-and-loss statements for the period that they have respectively operated as subsidiaries of the Pipe Line Company, will be furnished by the Pipe Line Company to Columbia within 15 days from the execution hereof and will be correct.

5. The Panhandle Company has been formed for the purpose of building a pipe line from the Panhandle in Texas to the City of Indianapolis, Indiana, through the States of Texas, Oklahoma, Kansas, Missouri, Illinois, and Indiana, with lateral lines, according to the route shown on the map attached hereto as Schedule C. It, or its wholly owned subsidiary, Texas Interstate Pipe Line Company, has acquired the right-of-way for a substantial part, approximately 350 out of a total of approximately 930 miles, of said pipe line. It has contracted for the construction of this pipe line in sections with the following respective contractors:

[fol. 50] Oklahoma Contracting Company, Dallas, Texas: From Moore County to a point near the Eastern Line of Harvey County, Kansas, approximately 310 miles.

Williams Brothers, Incorporated, Tulsa, Oklahoma: From Harvey County, Kansas, to a point of intersection with the Missouri-Kansas Pipe Line Co. 10-inch line near Paola, Kansas, approximately 150 miles.

J. J. Connor & Son Construction Company, Kansas City, Mo.: From the point of intersection above named to the Missouri River crossing near Booneville, Missouri, approximately 103 miles.

Williams Brothers, Incorporated, Tulsa, Oklahoma: From the Missouri River crossing near Booneville, Missouri, to Indianapolis, approximately 369 miles.

Said pipe line will be constructed of 22″ pipe from the point of beginning in Moore County, Texas, to Liberal, Kansas, of 24″ pipe from Liberal, Kansas, to a point near the Missouri State line, of 22″ pipe from the Missouri State line to Peoria branch, and of 20″ pipe from the Peoria branch to Indianapolis. Copies of the contracts with the contractors referred to will be furnished by the Pipe Line Company to Columbia within 15 days from the execution hereof. There will be furnished also, at the same time, an estimate of the total cost of the said Pipe Line project, including gas lands purchased in connection therewith, and

all appurtenances to said pipe line, such as compressors, telephone lines, etc., together with a statement of the amounts expended to date in such connection.

[fol. 51] 6. In addition to the pipe-line property above mentioned, the Panhandle Company, through its said subsidiary, Texas Interstate Pipe Line Company, owns approximately 138,518 acres of natural gas producing territory located in the following states and fields:

State	Field	Acreage
Texas	Panhandle	59,018
Oklahoma	Oklahoma Panhandle (Texas Co.)	44,900
Southwestern Kansas	Hougoton	34,607
		138,525

Such ownership is by lease on Mid-Continent 88 form on customary terms for the territory in question.

7. The Pipe Line Company itself, or through other subsidiary companies, owns natural gas lands by lease or Mid-Continent form 88 or under gas-purchase contracts, located in the following states and fields:

State	Field	Acreage
Kansas	Miami, Linn, Anderson Counties	70,949
Kansas	Chanute District	20,794
Missouri	Jackson County	37,346
Illinois	Jacksonville	2,213
Kentucky	Irvine and western Kentucky	104,597
Total		235,899

Of the above acreage approximately 150643 is held under lease as above stated and 85253 is controlled under gas purchase contracts. The Pipe Line Company will furnish to Columbia within 15 days after the execution hereof a copy of a report by Brokaw, Dixon, Garner, and McKee covering [fol. 52] a portion of the acreage described in the foregoing paragraph 6, together with a statement showing the acreage of Texas Interstate Pipe Line Company and acreage owned or controlled by Missouri-Kansas Pipe Line Company not included in such report, and on which no independent engineering estimate of reserves has been made.

8. The Pipe Line Company also, either directly or through other subsidiary companies, owns a system of pipe lines for the supplying of gas to the following cities and towns where it has contracts to supply natural gas to the companies owning the distributing properties therein, or distributes natu-

ral gas therein as follows: Kansas City, Mo. (wholesale delivery to American Pipe Line Co.); Independence, Mo.; Belton, Mo.; Loose Springs, Mo.; Morton City, Mo.; Raytown, Mo.; Paola, Kansas; Osawatomie, Kans.; Rantoul, Kans.; Imes, Kans.; Greely, Kans.; Lewisburg, Kans.; Lane, Kans.; Chanute, Kans.; Jacksonville, Ill.; Owensboro, Ky.; Henderson, Ky. (Industrial contract); Franklin, Ky.; Cloverport, Ky.

In the following communities franchises have been taken or contracts made, pipe lines being under construction: Bowling Green, Ky.; Russellville, Ky.; Hopkinsville, Ky.; Greenville, Ky.; Hawesville, Ky.; Whitesville, Ky.; Madisonville, Ky.; Oakland, Ky.; Mumfordsville, Ky.; Clarkesville, Tenn.; Tell City, Ind.; Cannelton, Ind.; Troy, Ind.; Rockport, Ind.

A statement of all other contracts for the sale of gas, which have been entered into by the Pipe Line Company or of any of its subsidiaries, will be furnished by the Pipe Line Company to Columbia within 15 days of the execution hereof.

[fol. 53] Columbia makes the following representations as to its property and business on the faith of which the Pipe Line Company has entered into this agreement:

Columbia is a corporation validly organized and existing under the laws of Delaware, with an authorized capital stock of 337,500 shares of $6 First Preferred Stock, 337,500 shares of $6 Second Preferred Stock, and 2,500,000 shares of Common Stock. All of said First Preferred Stock and Second Preferred Stock is outstanding and owned by Columbia Gas & Electric Corporation, a Delaware Corporation. Approximately 2,340,000 shares of said Common Stock, being its entire common stock issued, represented by voting-trust certificates, issued under a voting-trust agreement constituting George W. Crawford and Philip G. Gossler Voting Trustees of such stock, will be issued to the holders of common stock of Columbia Gas & Electric Corporation on June 30, 1930, in accordance with the declaration of a dividend heretofore declared by Columbia Gas & Electric Corporation. The properties of Columbia consist, in brief, of the stocks of four subsidiaries owning and operating the oil and gasoline properties owned as of January 1, 1930, by the subsidiaries of Columbia Gas & Electric Corporation. A balance sheet of Columbia, and such profit-and-loss account as

may be available, will be furnished by Columbia to the Pipe Line Company within 15 days from the date of execution hereof.

For Valuable Consideration it is hereby agreed between the Pipe Line Company and Columbia as follows:

First. The Pipe Line Company will assign and convey, or cause to be assigned and conveyed, to the Panhandle Com- [fol. 54] pany (a) all of the above gas lands of the Pipe Line Company or its other subsidiaries referred to in paragraph 7 above, such conveyance to be made either directly or through the stocks of the owning companies, and (b) all of the above shares of stock and indebtedness of the subsidiary companies other than the Panhandle Company referred to in paragraph 4 above, together with any indebtedness of Texas Inter-State Pipe Line Company, and (c) all of the pipe lines, distribution systems, and contracts referred to in paragraph 8 above, such assignment to be made either directly or through the stocks of the subsidiary companies, in consideration of the issue to the Pipe Line Company by the Panhandle Company of notes in an amount which shall be determined by the same standards as the purchase price to be paid by Columbia is determined pursuant to Article Second hereof.

Second. Such conveyance to the Panhandle Company by the Pipe Line Company having been accomplished and the total outstanding stock of the Panhandle Company having been acquired by the Pipe Line Company, the Pipe Line Company will sell to Columbia and Columbia will purchase, subject to the provisions of this contract, one-half of the total amount of stock and debt of the Panhandle Company so owned by the Pipe Line Company, the purpose being that at the conclusion of this transaction the Pipe Line Company and Columbia shall each own one-half of the total outstanding stock of the Panhandle Company and one-half of its total outstanding debt. The purchase price payable by Columbia shall be a cash sum to be agreed upon between the [fol. 55] Pipe Line Company and Columbia and to consist of, in the case of the properties owned by the Panhandle Company and its subsidiaries, cost including overhead, cost incidental to obtaining contracts and the like, and also cash on hand and other current assets of itself and subsidiaries less all current liabilities, and in the case of property of the Pipe Line Company and its other subsidiaries to be trans-

ferred to the Panhandle Company, upon the above basis plus a reasonable allowance for enhanced value resulting from the development markets.

The Pipe Line Company will notify Columbia, within 15 days from the execution hereof, of its computation of such purchase price with necessary details so as to show the manner of computation.

Third. Delivery of said stock and the transfer of said indebtedness so to be purchased by Columbia shall be made by the Pipe Line Company to Columbia at the office of the Columbia Gas & Electric Corporation, 61 Broadway, New York City, on August 5, 1930, and payment shall be made against the receipt thereof, subject to the provisions of this contract.

The net asset position of the Pipe Line Company and of the subsidiary companies shall not be less favorable at the date of closing than as shown by the balance sheets thereof hereinabove referred to; and the capitalization of said subsidiary companies as of said date shall be unchanged from that so stated except as shall be required in the case of the Panhandle Company by the provisions of this agreement. No dividend or other distribution of assets shall be made by any of the above subsidiary companies pending the closing of this contract.

[fol. 56] Fourth. It being intended that, on the consummation of the above sale, the cost of the construction of the part of said pipe line of the Panhandle Company above referred to remaining unfinished and the cost of the completion of any project of the Pipe Line Company or the other subsidiaries now in course of construction shall thereafter be borne by the Pipe Line Company and Columbia in equal shares, Columbia and the Pipe Line Company agree that when the purchase and sale of securities above mentioned shall have been consummated, the Pipe Line Company and Columbia will thereafter share each one-half of the cost of the expense of the completion of said pipe-line system to Indianapolis and one-half the cost of the completion of said other unfinished projects, such total cost, however, not to exceed $45,000,000 less the amount expended on date of closing in respect of the pipe-line system from Texas Panhandle to Indianapolis as notified to Columbia by the Pipe Line Company pursuant to the provisions of Paragraph 5. Whenever any payment is due for such con-

struction, the Pipe Line Company and Columbia will each promptly advance to the Panhandle Company one-half thereof, receiving therefor indebtedness and Common Stock of the Panhandle Company to the face of the advance in the proportion of $90 debt and two shares of stock for every One Hundred Dollars ($100) advanced; provided, however, that upon the last advance to be made by the parties hereto for the completion of said pipe line the proportion of stock and indebtedness received by such parties shall be such that there shall remain no authorized stock of the Panhandle Company not issued and outstanding. If within [fol. 57] 15 days after written notice that such payment will be required by the Panhandle Company, either Columbia or the Pipe Line Company shall fail to provide the necessary funds required for their aforesaid obligation, the other party hereto may itself provide such funds and shall be entitled to receive from the Panhandle Company therefor the same amount of indebtedness and stock of the Panhandle Company as would have been given to the other party to this agreement so in default if it had made the advance and the right of the party in default to receive such securities shall terminate. An appropriate contract or contracts will be entered into between the Panhandle Company and the parties hereto for this purpose.

Fifth. At the conclusion of the construction of the pipe line to Indianapolis, the Panhandle Company will enter into an agreement with Columbia Gas & Electric Corporation, a corporation of the State of Delaware, for the sale of gas to it or one or more of its subsidiary companies as it may elect, at equitable terms which will not deprive the stockholders of the Panhandle Company of a fair return, to be agreed upon between the parties hereto as hereinafter provided.

Sixth. Coincident with the delivery of and payment for the stock and debt of the Panhandle Company, provision will be made for enlarging the Board of Directors of the Panhandle Company to a total directorate of nine, of whom five shall be nominees of Columbia and four shall be nominees of the Pipe Line Company. Provision shall be made that in subsequent years such division of the Board between the nominees of Columbia and the nominees of the Pipe Line [fol. 58] Company shall be continued in a manner satisfactory to counsel for both parties.

Seventh. After the pipe line has been completed in accordance with the foregoing provisions or the expenditure of the maximum amount of cost hereinbefore in Article Fourth provided has been made, whichever shall be prior, the parties shall be under no obligation to share in any further capital expenditures of the Panhandle Company, and any further capital expenditures by such Company shall be financed by the Panhandle Company itself. Provision will be made in the recapitalization of the Panhandle Company prior to the purchase by Columbia hereinbefore provided for, so that, on said completion of the pipe line, or expenditure of said maximum cost, there will be no authorized but unissued voting stock of the P anhandle Company.

Eighth. The obligations of Columbia to make the above purchase are subject to the following:

(a) all the above representations of the Pipe Line Company contained in paragraphs 1 to 8 shall have been substantiated to the satisfaction of Columbia and all the obligations of the Pipe Line Company hereinabove set forth, to be performed prior to the consummation of the purchase, shall have been performed;

(b) counsel for Columbia shall be satisfied that the Pipe Line Company, the Panhandle Company, and the other above-named subsidiaries of the Pipe Line Company are validly incorporated and that their stock and securities are duly and legally issued; and that they have good title free from incumbrances to the properties, rights, franchises, and contracts which they are stated to own or operate by [fol. 59] the foregoing provisions of this Agreement and, in general, that all other legal requirements in the premise have been met;

(c) Columbia and the Pipe Line Company shall have agreed as to the terms of the contract referred to in Article Fifth above, which is to be executed on the completion of the pipe line for the sale of gas to Columbia Gas & Electric Corporation, and such contract shall have been confirmed by the Panhandle Company to the Columbia Gas & Electric Corporation, or otherwise as counsel for Columbia may advise, so that Columbia Gas & Electric Corporation may be assured of having the rights set out in said contract on the completion of the pipe lines;

(d) Columbia shall be satisfied that the contracts of the Pipe Line Company and its subsidiaries for the purchase and sale of gas and the contracts which Columbia believes the Pipe Line Company and its subsidiaries can obtain will be on sufficiently favorable terms to enable the Panhandle Company to carry on its operations at a profit;

(e) Columbia shall be satisfied that the gas reserves of the Pipe Line Company and its subsidiaries are sufficient to enable the Panhandle Company, after the acquisitions above set forth have been effected, to supply the proposed markets, as well as the proposed contract with the Columbia Gas & Electric Corporation, for a period sufficiently long to justify the expense of building the proposed pipe line;

Should Columbia determine that any of the foregoing conditions of this Article Eight are not fulfilled, it may give written notice thereof, to the Pipe Line Company by letter [fol. 60] addressed to Missouri-Kansas Pipe Line Company, 10 South LaSalle Street, Chicago, and thereafter all obligations of either party to the other under this contract shall be terminated without liability of one to the other.

Ninth. Between the date of the signing of this contract and the above date of August 5, 1930, set for the closing, Columbia shall have the right to examine all books, accounts, contracts, records, etc., of the Pipe Line Company and its subsidiaries, as well as all the properties thereof and test and verify the gas production of any said properties.

Tenth. Columbia may assign its rights and obligations under this contract to Columbia Gas & Electric Corporation, or to any subsidiary of Columbia or of Columbia Gas & Electric Corporation, but in the event of any said assignment the parent company of such subsidiary will guarantee such subsidiary's obligations under this agreement.

Eleventh. The obligations of the Pipe Line Company under this agreement are subject to the following:

(a) All of the representations of Columbia contained in the foregoing shall have been substantiated to the satisfaction of the Pipe Line Company and all of the obligations of Columbia hereinabove set forth as precedent to any performance by the Pipe Line Company shall have been performed.

(b) Counsel for the Pipe Line Company shall be satisfied that Columbia is validly incorporated and that its stock and securities are duly and legally issued.

(c) The Pipe Line Company and Columbia shall have agreed as to the terms of the contract referred to in Article Fifth above, which is to be executed on the completion of the pipe line for the sale of gas to the Columbia Gas & [fol. 61] Electric Corporation, and such contract shall have been confirmed by Columbia Gas & Electric Corporation to the Pipe Line Company, or otherwise as counsel for the Pipe Line Company may advise, so that the Pipe Line Company may be assured that Panhandle Eastern shall have the rights set out in said contract on the completion of the pipe line. Should the Pipe Line Company determine that any of the foregoing conditions of this article Eleventh are not fulfilled, it may give written notice thereof to Columbia by letter addressed to Columbia Oil & Gasoline Corporation, 61 Broadway, New York, and thereafter all obligations of either party to the other under this contract shall be terminated without liability of one to the other.

Twelfth. The obligations of the Pipe Line Company and Columbia under this Agreement shall in each case be subject to ratification of this Agreement by their respective boards of directors and in any case where such approval is legally necessary to the approval of their respective stockholders to the extent necessary.

In witness whereof, the parties have hereto caused their names to be subscribed by their respective corporate officers the day and year first above stated.

Missouri-Kansas Pipe Line Company, by Frank P. Parish, President. Columbia Oil and Gasoline Corporation, by E. Reynolds, Jr., Vice President.

[fol. 62] EXHIBIT "B" TO PETITION

Agreement dated September 8, 1930, between Central Public Service Corporation, a Maryland corporation, hereinafter sometimes referred to as Central Company, and Missouri-Kansas Pipe Line Company, a Delaware corporation, hereinafter sometimes referred to as Missouri Company.

Missouri Company represents—

(a) that the pro forma consolidated balance sheet of Missouri Company and its subsidiaries, attached hereto as Exhibit A, dated June 30, 1930, states substantially the condition of Missouri Company and its subsidiaries as of that date and that no changes have occurred or will occur in such condition since that date to the closing date except in the ordinary course of the business, which shall not include dealing in securities, and except as noted in Exhibit B, nor will any dividends other than stock dividends be declared, and that Missouri Company and its subsidiaries own and will own at closing date, the plants, properties, contracts, leases, and franchises, etc., constituting the pipe-line gas producing and distribution system mentioned or reflected in said balance sheet and the certificate made part thereof.

(b) that the statement attached hereto, marked "Exhibit B", is a substantially accurate statement of the liabilities of the Missouri Company and its subsidiaries as of this date and its best estimate of its cash requirements up to October 1, 1930, and a substantially accurate statement of any contract commitments for the payment of money of [fol. 63] the Missouri Company or its subsidiaries not appearing upon said balance sheet, and that the Missouri Company and its subsidiaries have no substantial liabilities, contingent or otherwise, other than those appearing upon the said balance sheet and the said statement marked "Exhibit B."

(c) That it has expended in cash upon its properties or upon those of its subsidiaries, the stock and securities of which are to be transferred hereunder, not less than $15,000,000, which sum represents the net amount of such expenditures after deducting any debt or encumbrances incurred on account of such properties, and that such expenditures represent actual assets.

(d) that it or its subsidiaries have contracts for the sale of gas, executed or under negotiation, to be owned or controlled by the Panhandle Company, which in the opinion of competent independent engineers will earn during the first year of operation of the pipe line now under construction by Panhandle Eastern Pipe Line Company; hereinafter referred to, not less than $4,000,000, net. Attached hereto is copy of letter from Brokaw, Dixon, Garner & McKee, containing the opinion above referred to.

(e) that it or its subsidiaries own natural-gas-producing acreage in Kansas, Oklahoma, Kentucky, Missouri, and Texas by lease on customary terms for the territory in question or under gas-purchase contracts in customary form, which, or the control of which, will be owned or held by the Panhandle Company sufficient to establish a reserve of not less than 1,500,000,000,000 cubic feet.

(f) that the titles to all the properties, contracts, and franchises owned by it and its subsidiaries and to be owned [fol. 64] or controlled by the Panhandle Company are good and sufficient, are assignable and transferable, and subject to no liens except as reflected in the balance sheet hereto attached; that said Panhandle Eastern Pipe Line Company or its subsidiaries, upon the consummation of this agreement, will have all necessary powers and rights, including the right to eminent domain for rights-of-way for pipe-line construction and the approval and consents of all Governmental bodies requisite to operate their properties as then existing.

(g) that the Panhandle Eastern Pipe Line Company, hereinafter sometimes referred to as Panhandle Company, is a duly organized corporation under the laws of the State of Delaware, with power to do business in the States where it is conducting business, and that its total outstanding stock, namely, 10,000 shares of no par common, and all of its funded indebtedness, is owned by the Missouri-Kansas Pipe Line Company, and that the capital stock so outstanding of said Company is legally issued and outstanding, fully paid and non-assessable.

The Central Company represents that the attached balance sheet as of July 31, 1930, marked "Exhibit C," shows substantially the present condition of the Central Company as of the date thereof, and that there have been no substantial changes therein to date except in the ordinary course of business, and that it is a corporation legally organized and existing under the laws of the State of Maryland with outstanding capital stock and securities as reflected in said balance sheet.

[fol. 65] Agreements

1. The Missouri Company will transfer and vest in the Panhandle Company all of its properties, rights, and assets of every nature whatsoever owned as of the date hereof, or

to which the Missouri Company has any right, by good and sufficient instruments of transfer, except—

(a) 10,000 shares of the common capital stock of no par value of said Panhandle Company; and

(b) assets specified in Exhibit D; and the Missouri Company further agrees to surrender to said Panhandle Company for cancellation all notes and indebtedness of said Panhandle Company owned by the Missouri Company as of the date of closing hereafter referred to. Said transfer shall be subject to, and the Panhandle Company shall assume and pay, all of the liabilities of the Missouri Company of the character described in Exhibit D hereto attached.

In consideration of the transfers aforesaid, the Panhandle Company will issue and deliver to the Missouri Company 93,750 shares of preferred stock of Panhandle Company of the character hereinafter described, and $9,375,000 in principal amount of the notes of the Panhandle Company of the character hereinafter described.

2. The Central Company agrees to issue and deliver to the Panhandle Company its notes of the character hereinafter described, in the principal amount of $18,657,500, and in consideration thereof the Panhandle Company will issue and deliver to the Central Company $18,750,000 in principal amount of its notes of the same character as provided for in paragraph 1 above.

[fol. 66] 3. The Missouri Company will transfer and deliver to the Central Company certificates representing 5,100 shares of the common capital stock of the Panhandle Company (in any event 51% of the amount of said common stock outstanding on the date of closing) and 46,875 shares of the preferred stock of the Panhandle Company out of the 93,750 shares to be issued to the Missouri Company, as provided in paragraph 1 hereof.

The Central Company will transfer and deliver to the Missouri Company $4,687,500 principal amount out of $18,750,000 principal amount of notes of the Panhandle Company to be issued and delivered to it by the Panhandle Company pursuant to the provisions of paragraph 2 hereof.

4. The notes of the Panhandle Company above referred to shall be Twenty-year notes dated September 1, 1930, bearing interest at the rate of 6% per annum, and shall be con-

vertible after January 1, 1932, in whole or in part by 1st, at the option of the Panhandle Company into the preferred stock of the Panhandle Company of the character hereinafter described, on the basis of one share of such preferred stock for each $100.00, principal amount of such notes.

The notes of the Central Company above referred to shall be Twenty-year notes dated September 1, 1930, bearing interest at the rate of 6% per annum, and shall be convertible in whole or in part at the option of the Central Company into the preferred stock of the Central Company, of the character hereinafter described, on the basis of one share of such preferred stock for each $100.00, principal amount of such notes, the right of the Central Company to require such conversion, however, and to issue its preferred stock [fol. 67] to effect such conversion shall accrue only when the net consolidated earnings of the Central Company and its subsidiary corporations for a period of twelve consecutive calendar months during the fifteen consecutive calendar months preceding the calendar month in which the additional shares shall be issued shall be equal to at least two and one-half times the actual dividend requirements on all of the preferred tock of the Central Company at the time outstanding and the additional shares so to be issued. Such net consolidated earnings shall be ascertained and calculated in the manner provided in the charter of the Central Company now in effect.

The preferred stock of Panhandle Company above referred to shall be part of an authorized issue of 500,000 shares of preferred stock of the Panhandle Company, issuable in series, with such preferences, terms, and provisions as shall be determined by the Board of Directors of the Panhandle Company, provided that said preferred stock to be received by the Missouri Company and the Central Company and into which the notes of the Panhandle Company above referred to may be converted, shall be entitled to preferred dividends at the rate of $6.00 per annum, to be cumulative only after January 1, 1932, but shall otherwise have equal preference as to dividends (except as the amount thereof) and assets as the other series of said preferred stock.

The preferred stock of Central Company shall be the $6.00 preferred stock now provided for under the charter of Central Company. The trust indentures under which the [fol. 68] notes of the Panhandle Company and of the Cen-

tral Company above referred to shall be issued shall contain the usual and customary provisions relating to notes of this character and shall be in such form as shall be approved by counsel for both parties, provided that the indenture under which the notes of Central Company shall be issued shall contain no more burdensome restrictions on the Company than are contained in the indenture of Central Public Service Corporation under which are issued its $25,000,000 debentures. All legalities in connection with the issue of said notes and preferred stock of the Panhandle Company and of the Central Company shall be subject to the approval of counsel for both parties hereto.

5. The Missouri Company agrees to cause Panhandle Company to take all action necessary to fully carry out the terms and provisions of this agreement and to cause such modifications to be made in the charter and bylaws of the Panhandle Company as may be necessary to comply with the provisions of this agreement and to provide for a Board of nine Directors Missouri Company agrees on the closing date to procure the resignation of all of the Directors of the Panhandle Company and to cause to be elected as Directors of said Company five persons to be nominated by the Central Company and four persons to be nominated by the Missouri Company. Adequate provision will be made to be determined by counsel for both parties, to the end that all contracts of importance between Panhandle Company and Central Company or any subsidiary or affiliated companies thereof, shall be subject to the approval of two-thirds (⅔) of the Board of Directors of Panhandle Company.

[fol. 69] 6. Anything hereinbefore to the contrary notwithstanding, in the event that the net amount which the Missouri Company has expended upon its properties as provided in paragraph (c) above, plus the amount of cash, if any, in excess of $500,000.00 to be retained by the Missouri Company as provided in Exhibit D, shall be less or greater than $15,000,000.00, the amount of the notes and preferred stock of the Panhandle Company to be received by the Missouri Company, the amount of notes of the Central Company to be delivered to the Panhandle Company and the amount of notes and preferred stock of the Panhandle Company to be received by the Central Company in accordance with paragraphs 1 and 2 hereof, respectively, shall in each case be correspondingly reduced or increased

upon the same basis as the amounts of such stock and/or notes to be respectively received or delivered by said Companies, is computed in said paragraphs 1 and 2 in the case of a net expenditure of $15,000,000, by the Missouri Company on its properties, all as set forth in Exhibit E hereto, provided, however, that in the event that said net amount so expended by the Missouri Company on its properties plus the amount of cash, if any, in excess of the $500,000.00 to be retained by the Missouri Company as provided in Exhibit D, shall be less than $14,000,000.00, the Central Company may at its option elect to terminate this contract.

7. The Missouri Company agrees to indemnify and save harmless the Panhandle Company against any liability of the Missouri Company and its subsidiaries for the payment of money not disclosed in the balance sheet and statement of liabilities hereto attached, marked Exhibits A and B, other [fol. 70] than liabilities under executory contracts and commitments in the ordinary course of business.

8. The Central Company agrees upon the consummation of this contract that it will arrange for a temporary loan to be used for the construction of pipe lines, to be made by the Chase National Bank of the City of New York to the Panhandle Company, of not less than $6,000,000, upon the note of that Company, to be payable March 31, 1931, and bearing interest at 4½%, plus a commission of one-half of one percent, such loan to be guaranteed by endorsement or otherwise by the Missouri Company and the Central Co.

9. Upon the consummation of this contract the Central Company proposes to provide banking facilities to the Panhandle Company to enable it to complete its pipe line construction program.

10. All legalities in connection with the organization of the Panhandle Company, the transfer to it of the assets and the assumption by it of liabilities of Missouri Company and the form and sufficiency thereof, and the sufficiency of the titles of the properties to be owned on the consummation hereof by Panhandle Company and its subsidiaries, the validity and sufficiency of all franchises, contracts, gas and other leases, rights-of-way and easements and the reasonable feasibility from a legal standpoint of the completion of proposed pipe-line construction, shall be subject to the approval of counsel for the Central Company,

and the Missouri Company shall furnish immediately all data, information, and documents reasonably required by the Central Company to permit the verification of representations and the consideration of the legalities herein provided for.

[fol. 71] 11. All legalities in connection with the organization of Central Company shall be subject to the approval of counsel for the Missouri Company and the Central Company agrees to furnish all data, information, and documents reasonably required by the Missouri Company to permit the verification of representations and the consideration of the legalities herein provided for.

12. The closing date for the consummation of this contract shall be October 1, 1930, and the deliveries and transfers required to be made hereunder shall be made on said closing date at the office of Harris, Forbes & Company in New York City, or at such other place as shall be mutually agreed upon between the parties.

This agreement shall be subject with respect to the obligations of the Central Company to the approval of the Board of Directors of the Central Company at a meeting to be held not later than September 17, 1930, and with respect to the obligations of Missouri Company, shall be subject to the approval of the Board of Directors of the Missouri Company at a meeting to be held not later than September 17, 1930, and also subject to the approval of the stockholders of Missouri Company.

All transfer stamps and original issue stamps in connection with the securities covered by this agreement shall be paid by Panhandle Company.

In Witness Whereof the parties hereto have executed this instrument this 8th day of September 1930.

Missouri-Kansas Pipe Line Company, By Frank P. Parish; Central Public Service Corporation, By A. E. Peirce, President.

[fol. 72] EXHIBIT "C" TO PETITION

Contract, this 17th day of September 1930 between Missouri-Kansas Pipe Line Company (hereinafter referred to as "Pipe Line Company"), party of the first part, The

National City Company (hereinafter referred to as "City Company"), parties of the second part, and Columbia Oil and Gasoline Corporation (hereinafter referred to as "Columbia"), party of the third part.

1. The Pipe Line Company represents to the City Company and to Columbia as follows:

(a) The Pipe Line Company is a corporation duly organized and existing under the laws of the State of Delaware, with an authorized capital stock consisting of 5,000,000 shares of Common Stock, of the par value of $5 each, and 5,000,000 shares of Class B stock of the par value of $1 each. Of the said stock, 1,065,452 shares of Common Stock (exclusive of dividend scrip) and no more are now outstanding, and 1,598,918 shares of Class B Stock and no more have been issued and are now deposited under a Voting Trust Agreement. The Pipe Line Company has no stock of any class, except as above set forth and has no funded indebtedness.

(b) Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle Company") is a corporation duly organized and existing under the laws of the State of Delaware, having a total authorized share capital consisting of 15,000 shares of Preferred Stock, of the par value of $100 a share, and 10,000 shares of Common Stock, with- [fol. 73] out par value, all of which Preferred Stock has heretofore been issued but has since been retired, and is now held in the treasury of the Panhandle Company, and will not be reissued, and all of which Common Stock is now issued and outstanding and owned by the Pipe Line Company. No options or rights to purchase any of the said stock are now outstanding. All the outstanding indebtedness of the Panhandle Company, except indebtedness for current construction and material costs, gas leases and the like, is owned by the Pipe Line Company and represents in general advances made to the Panhandle Company by the Pipe Line Company for the acquisition and construction of its properties.

(c) The Panhandle Company has been organized for the purpose of building and operating a gas pipe line from the Panhandle district of the State of Texas to the Indiana-Illinois state line, through the states of Texas, Oklahoma,

Kansas, Missouri, and Illinois, with lateral lines. It or its wholly owned subsidiaries, Texas Interstate Pipe Line Company and/or Panhandle Eastern Pipe Line Company of Illinois, have acquired the right-of-way for a substantial part, of approximately 350 miles, out of a total of approximately 930 miles, of the said pipe line, and have constructed approximately 200 miles of the pipe line. The said pipe line has and will be constructed of 22-inch pipe from the point of beginning in Moore County, Texas, to Liberal, Kansas, of 24-inch pipe from Liberal, Kansas, to a point near the Missouri state line, of 22-inch pipe from the Missouri state line to the Peoria branch, and of 20-inch pipe from the said Peoria branch to the Indiana-Illinois state line. [fol. 74] Copies of the contracts for the construction of the pipe line, initialed for identification, will be furnished by the officer of the Pipe Line Company signing this contract.

(d) In addition to the pipe-line property above described, the Panhandle Company, through its said subsidiary, Texas Interstate Pipe Line Company, controls approximately 138,000 acres of natural-gas producing lands.

(e) The Pipe Line Company either directly and/or through one hundred per cent stock ownership in the Missouri-Kansas Gas Company and Central States Gas Utilities Company (an Illinois Corporation), and/or through a fifty-one per cent stock ownership in J. D. Judd & Co. (a Delaware Corporation), and Shale Gas Corporation (a Delaware Corporation) owns natural gas properties including leases or gas purchase contracts in the States of Missouri and Kansas, and a system of pipe lines for the supplying of natural gas to the following cities and towns: Kansas City, Mo. (wholesale delivery to American Pipe Line Company), Independence, Mo., Delton, Mo., Loose Springs, Mo., Morton City, Mo., Raytown, Mo., Paola, Kan., Osawatamie, Kan., Rantoul, Kan., Imes, Kan., Greely, Kan., Lewisburg, Kan., Lane, Kan., Chanute, Kan.

(f) The net asset position of the Panhandle Company and its subsidiary companies and of the subsidiary companies mentioned in paragraph (e) above (except for intercompany transfers) shall not be substantially less favorable at the Closing Date than as shown on the pro forma consolidating balance sheet prepared by Arthur Andersen & Co., certified public accountants, as of June 30, 1930. No

[fol. 75] dividend or other distribution of assets shall be made by the Panhandle Company or any of the above subsidiary companies pending the Closing Date.

II. The City Company represents to the Pipe Line Company and Columbia that it is a corporation duly organized and existing under the laws of the State of New York and has full corporate power to enter into this contract and to perform its obligations hereunder.

III. Columbia represents to the Pipe Line Company and the City Company that it is a corporation duly organized and existing under the laws of the State of Delaware, with an authorized capital stock consisting of 3,175,000 shares of which shares all of the Preferred Shares are owned by Columbia Gas & Electric Corporation and all of the Common Stock is deposited in a Voting Trust of which P. G. Gossler and G. W. Crawford are the Voting Trustees. Columbia represents that its net worth is over $35,000,000.

IV. The Pipe Line Company (Mokan) agrees with the parties hereto as follows:

(a) That it will transfer to the Panhandle Company all of the natural-gas fields, gas contracts, pipe lines, distributing systems, et cetera, which it owns wherever located, except those located in Kentucky or Southern Indiana, and its stock ownership in all corporations which may own similar property located in the same territory.

(b) That it will sell and deliver to Columbia 5,000 shares of Common Stock of the Panhandle Company (being one-half of its total stock outstanding) at the price per share determined as provided in Article VIII hereof.

[fol. 76] (c) That it will on or before the Closing Date pay, without recourse to the original debtor or obligor, all the debts and obligations of the Panhandle Company and of its subsidiaries, and of the other corporations the stock of which is to be transferred under paragraph (a) of this Article, existing on August 31, 1930, as determined by Arthur Andersen & Co., certified public accountants, and that the Pipe Line Company will cancel any debt or obligation to it of the Panhandle Company, or of its subsidiaries or of any of said corporations referred to in this paragraph (c) as of August 31, 1930. The Panhandle Company will

reimburse the Pipe Line Company with interest at the rate of six per cent per annum from the date of such advances to the date of reimbursement for any amounts advanced by the Pipe Line Company subsequently to August 31, 1930, to the Panhandle Company or its subsidiaries or to any of the other corporations, the stock of which is to be transferred under paragraph (a) of this Article or for account of the properties other than stock, owned directly by it and to be transferred to Panhandle Company under paragraph (a) of this Article IV, other than amounts advanced for the purpose of paying debts or obligations existing on said date as provided heretofore in this paragraph.

(d) From time to time as requested by Columbia on or prior to March 15, 1931, the Pipe Line Company will sell to Columbia all or any part of 2,000 shares of Common Stock of the Panhandle Company (said 2,000 shares being twenty per cent of its total outstanding stock) at the same price per share as is determined for the purchase by Co-
[fol. 77] lumbia of the original 5,000 shares of stock of Panhandle Company.

(e) The Pipe Line Company, either directly or through its present and/or future subsidiaries, will enter into gas-purchase contracts with the Panhandle Company upon substantially the following terms:

(1) An excess-capacity contract for the purchase up to 20,000,000 cubic feet of gas per day at 18 cents per M cubic feet, without limit as to time so long as the Panhandle Company has any excess capacity, provided, that if the Panhandle Company can sell all or any gas at a higher price it may reduce proportionately deliveries under this excess capacity contract.

(2) Firm contract, commencing when the Panhandle Company gives notice to the Pipe Line Company and Columbia that it no longer has any excess capacity, for ten years and thereafter with right of cancellation by either party on one year's notice, at the rate of 26½ cents per M cubic feet, deliveries under such contract to be as required by the Pipe Line Company and to aggregate for each year an amount producing at least a 70-per cent annual load factor based on the maximum daily delivery, which maximum shall in no case exceed 20,000,000 cubic feet per day, and after the expiration of one year from the effective date

of this firm contract such maximum day shall not exceed the maximum day established during said first year.

(f) The Pipe Line Company will cause the Panhandle Company, pursuant to due corporate action, to create an issue of $20,000,000 aggregate principal amount, of Bonds [fol. 78] substantially in accordance with Schedule A hereto attached.

(g) The Pipe Line Company will deliver to or on the order of the City Company 200,000 shares of the Pipe Line Company's Common Stock as presently constituted as consideration for the purchase of the Bonds and the arranging of the credits hereinafter in Article VI provided for, and will cause the Panhandle Company to sell and deliver to the City Company the entire issue of $20,000,000 aggregate principal amount, of bonds, above described in Schedule A, for the purchase price paid to the Panhandle Company of $18,000,000, plus accrued interest on the said $20,000,000, aggregate principal amount, of Bonds from October 1, 1930, to the date of delivery, and to pay the usual expenses in connection with such financing.

V. Columbia agrees with parties hereto as follows:

(a) That it will purchase the said 5,000 shares of stock of Panhandle and pay therefor the price per share determined as provided in Article VIII hereof.

(b) That it will not exercise its right to acquire any of the 2,000 shares of stock of Panhandle referred to in paragraph (d) of Article IV hereof unless simultaneously therewith it shall have contracted to sell to one or more oil, gas, or utility companies the stock so to be acquired by Columbia from the Pipe Line Company and an equal amount of similar stock then owned by Columbia and, unless Columbia and the Pipe Line Company have agreed otherwise, as a [fol. 79] part of the contract the purchaser has agreed to contribute its pro rata share of any additional financing referred to in Article VII, paragraph (a).

(c) That it will cause the Columbia Gas & Electric Corporation, either directly or through its present and/or future subsidiaries, to enter into gas-purchase contracts with the Panhandle Company at or near the Indiana-Illinois state line upon substantially the following terms:

(1) An excess capacity contract for the purchase up to 20,000,000 cubic feet of gas per day, at 18 cents per M cubic feet, without limit as to time so long as the Panhandle Company has any excess capacity, provided, that if the Panhandle Company can sell all or any gas at a higher price it may reduce proportionately deliveries under this excess-capacity contract.

(2) Firm contract, commencing when the Panhandle Company gives notice to the Pipe Line Company and Columbia that it no longer has any excess capacity, for ten years and thereafter with right of cancel-ation by either party on one year's notice, at the rate of 26½ cents per M cubic feet, deliveries under such contract to be as required by Columbia and to aggregate for each year an amount producing at least a 70 per cent annual load factor based on the maximum daily delivery, which maximum shall in no case exceed 30,000,000 cubic feet per day, and after the expiration of one year from the effective date of this firm contract such maximum day shall not exceed the maximum day established during said first year.

VI. The City Company agrees with the parties hereto:

[fol. 80] (a) That it will purchase the said bonds described in paragraph (f) of Article IV and will pay the purchase price therefor on the Closing Date.

(b) That it will arrange a credit from the National City Bank of New York to the Panhandle Company of:

(1) $3,000,000, effective at once and running until the Closing Date in this agreement:

(2) $5,000,000, given on or before October 10, 1930, and running until 30 days after said Closing Date, provided, that the Panhandle Company will apply out of the proceeds from the Sale of its Bonds so much as it may draw down for September construction to the earlier repayment of such credit;

(3) From time to time, so long as any of the proceeds from the sale of said Bonds remain in escrow with the Trustee, on or before the 10th day of any month, an amount substantially equivalent to the cash which during that month the Panhandle Company may be entitled to withdraw

from escrow for expenditures made by it in the previous month.

VII. The Pipe Line Company and Columbia agree with the parties hereto:

(a) That they will, subject to the provisions of Article V paragraph (b) hereof, advance to the Panhandle Company in equal amounts all cash in excess of that expended or for which liabilities as determined by Arthur Andersen & Co. existed, on August 31, 1930, and of the proceeds of the Bond issue, necessary to complete the pipe line under construction from Texas to the Indiana-Illinois state line and take therefor notes and common stock in the ratio of $90 in notes and $10 in two shares of common stock as pre- [fol. 81] sently constituted, provided that the notes shall be specifically subordinated to the Bonds and shall mature at a date later than the maturity of the Bonds.

(b) In the event that the total cost of the completion of the pipe line heretofore in this Article VII referred to is less than $40,000,000, then the Panhandle Company will deposit with the trustee for the Bonds the difference between $40,000,000, and such total cost. Such deposit may be withdrawn from time to time by the Panhandle Company for 100 percent of capital expenditures subsequently made, or such deposit shall be returned to the Panhandle Company from time to time upon cancel-ation or redemption of Bonds (other than out of Sinking Fund moneys) in amounts equal to 200 percent of the principal amount of Bonds so canceled or redeemed. In the event such total cost is in excess of $40,000,000, then the Panhandle Company shall be entitled to have additional Bonds delivered to it equal in principal amount to 50 percent of such excess.

(c) That they will cause the Panhandle Company to put the pipe line into commercial operation as soon as practical after completion, and to operate the same at its highest possible efficiency.

VIII. The price per share for the stock of Panhandle to be sold by the Pipe Line Company and to be purchased by Columbia under the provisions of this Contract shall be ascertained as follows: There shall be determined by Arthur Andersen & Co. the actual cash investment as of August 31, 1930, of the Pipe Line Company system in the

Panhandle Company and the Panhandle's subsidiary com-
[fol. 82] panies as these subsidiaries now exist, such cash investment to be the actual original cash cost to the Pipe Line Company system, plus interest thereon during construction at the rate of six percent per annum, and such cash cost to include the payments made for engineering services by others than companies affiliated with the Pipe Line Company system, legal expenses, taxes during construction, organization costs, costs of franchises, and the $631,000 expended by the Panhandle Company for gas-sale or gas-purchase contracts. To such aggregate cash investment shall be added the debts and obligations existing of the Panhandle Company and its subsidiaries on August 31, 1930, to be paid by the Pipe Line Company as per Article IV, paragraph (c), above (these debts and obligations not to include those of the subsidiaries of the Pipe Line Company whose stock is to be transferred to the Panhandle Company as per said Article IV, paragraph (c)). To the sum so ascertained shall be added $7,333,000. The price per share of Panhandle Stock shall be obtained by dividing the total sum by 10,000 and adding interest on said price at the rate of six percent per annum from August 31, 1930, to the date of payment for each share of stock.

IX. The parties hereto agree that the certificate of incorporation of Panhandle Company will be amended to restore to the Common Stock of that Company a preemptive right in respect of any further issue of voting stock.

X. The parties hereto agree that delivery and payment for shares of stock and Bonds heretofore provided for in paragraph (a) of Article V and paragraph (a) of Article VI shall be made at the Corporate Trust Department of the [fol. 83] City Bank Farmers Trust Company, No. 52 Wall Street, Borough of Manhattan, City and State of New York, on October 7, 1930, between the hours of 10 o'clock A. M. and 12 o'clock noon, on that day, which date is sometimes heretofore called the Closing Date.

XI. This contract is entered into by the City Company upon the following conditions:

(a) The legality of the issue of the Bonds of the Panhandle Company, referred to in Article IV hereof, the title of the Panhandle Company to its properties, the legality and sufficiency of any and all franchises necessary for their

present operations and for operations presently contemplated, and all other legal details in connection with the execution of this Contract shall be subject to approval of counsel for the City Company.

(b) In case Columbia shall for any reason fail to purchase the stock of the Panhandle Company then the City Company shall, as its option, have the right to withdraw from this Contract and to be relieved from any and all obligation hereunder, upon giving to the Pipe Line Company notice of exercise of its said option.

XII. Anything herein to the contrary notwithstanding, should the City Company for any reason fail to perform its obligations under this Contract, the obligations of Columbia and the Pipe Line Company hereunder shall continue, in which event Columbia and the Pipe Line Company will, subject to the provisions of Article V, paragraph (b), hereof, advance to the Panhandle Company in equal amounts all cash in excess of that expended or for which liabilities as determined by Arthur Andersen & Co. existed [fol. 84] on August 31, 1930, necessary to complete the pipe line under construction from Texas to the Indiana-Illinois state line and take therefor notes and common stock in the ratio of $90 in notes and $10 in two shares of common stock as presently constituted, provided that the notes shall be specifically subordinated to the Bonds and shall mature at a date later than the maturity of the Bonds.

XIII. The Pipe Line Company will cause the Panhandle Company to deliver to the City Company a letter signed by the President of the Panhandle Company descriptive of its properties and the project and of the Bonds in reasonable detail and in form satisfactory to the City Company. Columbia will cooperate in the preparation of such letter. From time to time the Pipe Line Company and Columbia will cause the Panhandle Company to furnish the City Company with quarterly statements of operations and balance sheet in reasonable detail.

XIV. If within 15 days after written notice that payment will be required by the Panhandle Company for the completion of its pipe line, either Columbia or the Pipe Line Company shall fail to provide their share of the necessary funds required as provided in Article VII, paragraph (a),

or in Article XII hereof, the party not in default may itself provide such funds and shall be entitled to receive from the Panhandle Company therefor the same securities as would have been given to the other party so in default if it had made the advance and the right of the party in default to proceed further with such financing shall terminate.

[fol. 85] In witness whereof the parties hereto have executed this Contract by their duly authorized officers, the day and year first above written.

Missouri-Kansas Pipe Line Company, by Frank P. Parish, President, The National City Company, by Stanley A. Russell, V. Pres., Columbia Oil and Gasoline Corporation, by Philip G. Gossler, President.

[fol. 86] EXHIBIT "D" TO PETITION

Memorandum dated September 30, 1930, between Columbia Oil & Gasoline Corporation, hereinafter called the Oil Company, and Missouri-Kansas Pipe Line Company, hereinafter called the Pipe Line Company.

The parties have executed a contract with The National City Company under date of September 17, 1930, which is hereafter referred to as the Contract.

It is mutually agreed as follows:

1. The parties will, at the closing of the purchase of the bonds, deposit in a Voting Trust, of which Philip G. Gossler, Frank P. Parish, and George H. Howard will be the Voting Trustees, all of the stock of the Panhandle Eastern Pipe Line Company, of which a 50% interest is sold by Pipe Line Company to the Oil Company under the contract and the remaining 50% interest is retained by the Pipe Line Company, so that the entire 100% interest in said stock will be under the Voting Trust. Voting Trust certificates in identical form will be issued to the Oil Company and the Pipe Line Company representing their stock deposited. The Voting Trust will run for 10 years (or such longer period as may be allowed by Delaware law); will confer upon the Voting Trustees all voting powers in respect of the stock, the action of the Trustees to be by a majority thereof, and will provide for succession to the respective Voting Trustees, in the case of Mr. Gossler, by nomination of Columbia

[fol. 87] Oil & Gasoline Corporation, in the case of Mr. Parish by nomination of Missouri-Kansas Pipe Line Company, and in the case of Mr. Howard, by nomination of The United Corporation.

II. The provisions of the contract for the sale of up to an additional 20% of the stock of Panhandle Eastern Pipe Line Company, by the Pipe Line Company to the Oil Company for resale by it, will be fulfilled by the delivery of Voting Trust certificates, as will also the Oil Company's obligation under the contract to resell a like amount of the Panhandle Eastern Pipe Line Company's shares of stock which it owns to the same purchaser, and the Voting Trust agreement will permit the withdrawal of stock certificates, if the purchaser requires, against cancellation of the corresponding Voting Trust Certificates, for the purpose of making delivery for such resale. Such resale may not be made to Columbia Gas & Electric Corporation, but it is agreed that such resale may be made, among others, to The United Corporation. The date on or before which the Oil Company can purchase such additional 20% and such resale can be made, is extended from March 15, 1931, to September 15, 1931.

III. The board of directors of the Panhandle Eastern Pipe Line Company will forthwith be reconstituted so that all but one thereof shall be nominated, 50% by the Oil Company and 50% by the Pipe Line Company, and the remaining director shall be Mr. George H. Howard or a nominee of the United Corporation. At the closing of the purchase of the bonds the Pipe Line Company will procure the resig- [fol. 88] nations of all the directors of the Panhandle Eastern Pipe Line Company and will deliver to the Oil Company the resignations of the directors necessary to provide for the substitution of the nominees of the Oil Company and of Mr. Howard or the nominee of The United Corporation. The reconstituted board will have not less than nine directors. In case of resale of any of the stock of the Panhandle Eastern Pipe Line Company by the Oil Company as per the preceding paragraph, the purchaser shall, if the Oil Company request, be allowed proportionate representation on the board, the Pipe Line Company and the Oil Company contributing proportionately thereto out of their respective nominees unless the board shall be increased for the purpose.

IV. The purchase by the Oil Company from the National City Company of the bonds which are referred to in the contract is for account of the Oil Company alone and the Pipe Line Company is not interested therein.

V. At the closing of the purchase of the bonds, the Pipe Line Company and the Oil Company will, if the Oil Company requests, deposit each 20% of the voting trust certificates with Guaranty Trust Company of New York under an escrow agreement providing for their release to carry out the resale referred to in paragraph II above, or, if there is no resale, to be returned to the parties.

VI. The properties of the Pipe Line Company in Tennessee are to be treated in the same way as the Kentucky and southern Indiana properties of the Pipe Line Company are treated under the contract, i. e., excluded from transfer [fol. 89] to the Panhandle Eastern Pipe Line Company, and the cost thereof not to be included in the computation of the price per share of Panhandle stock under the contract.

Witness the signatures of the above parties.

Columbia Oil & Gasoline Corporation, by P. G. Gossler, President, Missouri-Kansas Pipe Line Company, by Frank P. Parish, President.

[fol. 90] EXHIBIT "E" TO PETITION

Letter, Dated March 14, 1934, of Panhandle Corporation, to Holders of Its Two-Year 6% Collateral Trust Notes

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Offer of Exchange, Dated March 12, 1934, of Panhandle Corporation, to Holders of Its Two-Year 6% Collateral Trust Notes

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Plan of Readjustment of Funded Debt and Capitalization, Dated March 12, 1934, of Panhandle Eastern Pipe Line Company

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Agreement, Dated March 12, 1934, Between Columbia Oil & Gasoline Corporation and Panhandle Corporation

Panhandle Corporation,
Room 2700, 63 Wall Street,
New York, New York, March 14, 1934.

To the Holders of Two-Year 6% Collateral Trust Notes of Panhandle Corporation:

The above-described Notes of Panhandle Corporation (herein called the "Panhandle Notes") matured by their terms on March 15, 1933, but the holders of approximately [fol. 91] 98% of such Notes consented to an extension of maturity to March 15, 1934. These Notes, constituting the only funded indebtedness of Panhandle Corporation, are secured by pledge of $4,945,500 principal amount of 6% Promissory Notes (subordinated), due October 2, 1950, and 114,900 shares of Common Stock (represented by Voting Trust Certificates) of Panhandle Eastern Pipe Line Company (herein called "Eastern"), which latter Notes and stock constitute substantially all of the assets of Panhandle Corporation. Consequently Panhandle Corporation is without funds with which to meet its Notes at their extended maturity on March 15, 1934.

Owing to the depression, the demand for natural gas, both for industrial and domestic purposes, in the territory served by the Eastern pipe line has not been sufficient to permit Eastern to develop its earnings to the point where they would cover its present fixed charges and consequently, as indicated by the attached Plan of Readjustment of Eastern, there is danger of default not only upon the above-named subordinated Notes of Eastern, of which $9,891,000 are outstanding, but also upon its Mortgage Bonds, of which $19,400,000 are outstanding, a default which would probably result in a foreclosure of the mortgage securing such Bonds and greatly jeopardize the position of the Notes and stock of Eastern, which constitute collateral for the Panhandle Notes.

Under these conditions, Eastern has proposed to its security holders a Plan of Readjustment of its Funded Debt and Capitalization, and Panhandle Corporation, in order to put its Noteholders in a position where they can assent [fol. 92] to the Eastern Plan, has proposed to such holders an Offer of Exchange of Panhandle Notes for a like principal amount of Eastern Notes. Copies of such Offer of Exchange and Eastern Plan are attached hereto.

Holders of Panhandle Notes who accept the proposals set forth in such Offer and Plan will receive (if and when such Offer and Eastern Plan are carried out), for each $1,000 *principal amount of Panhandle Notes* $750 *principal amount of Mortgage Bonds of Eastern, due October* 1, 1950. Such Mortgage Bonds are to be part of a total issue of $19,400,000 principal amount and will constitute the only funded debt of Eastern upon consummation of the Eastern Plan; except for $1,600,000 of Non-Interest Bearing Notes, due September 1, 1936. They will bear interest at the rate of 6% per annum, except that for the years 1934, 1935, and 1936 they will bear fixed interest at the rate of 4% per annum, and an additional 2% per annum payable when earned under the conditions to be described in the Indenture securing such Bonds and in any event at the maturity or earlier redemption of the Bonds. For a further statement of the terms of such Bonds and a description of the security therefor reference is made to Schedule B of the Eastern Plan attached hereto.

The Board of Directors of Panhandle Corporation has approved the Eastern Plan and believes that, in view of the financial condition of Eastern disclosed by such Plan and of the junior position of the Eastern securities owned by Panhandle Corporation and of the danger that a foreclosure of the senior securities of Eastern would wipe out such junior securities, the attached Offer of Exchange and Eastern Plan are in the interest of the holders of the Pan- [fol. 93] handle Notes. It therefore urges the prompt acceptance of such Offer and Eastern Plan by the holders of all of the Panhandle Notes.

Holders of $3,276,000 of Panhandle Notes (out of a total of $4,940,000 principal amount outstanding) have already indicated their acceptance of such Offer and Eastern Plan.

Reference is made to the attached Offer and Eastern Plan for a complete statement of their terms and conditions.

Holders of Panhandle Notes who desire to accept the Offer of Panhandle Corporation and to assent to the Eastern Plan with respect to the Notes of Eastern to be received by them under the Offer should execute the enclosed Letter of Transmittal and Power of Attorney and forward the same, together with their Panhandle Notes, to Chemical Bank & Trust Company, Corporate Trust Department, 165 Broadway, New York, N. Y.

Panhandle Corporation, by J. H. Hillman, Jr., President.

Panhandle Corporation Offer of Exchange, Dated March 12, 1934, to Holders of Its Two-Year 6% Collateral Trust Notes.

The above-named Notes of Panhandle Corporation (herein called the "Panhandle Notes"), which are outstanding in the principal amount of $4,940,000, matured by their terms on March 15, 1933, but the holders of approximately 98% of such Notes consented to an extension of maturity to March 15, 1934. The Panhandle Notes are guaranteed by Missouri-Kansas Pipe Line Company, which is in [fol. 94] receivership. They constitute the only funded indebtedness of Panhandle Corporation and are secured by pledge of $4,945,500 principal amount of 6% Promissory Notes (subordinated), due October 2, 1950, and 114,900 shares of Common Stock (represented by Voting Trust Certificates) of Panhandle Eastern Pipe Line Company, a Delaware corporation (herein called "Eastern"), which latter Notes and stock constitute substantially all of the assets of Panhandle Corporation. Consequently, Panhandle Corporation is without funds with which to meet its Notes at their extended maturity on March 15, 1934.

There is attached hereto a balance sheet, as at December 31, 1933, of Panhandle Corporation, certified by D. G. Sisterson & Co., certified public accountants.

Panhandle Eastern Pipe Line Company (Eastern).— The outstanding funded debt and capital stock of Eastern, all of which is owned by Panhandle Corporation and by Columbia Oil & Gasoline Corporation (herein called "Columbia Oil") is as follows:

	Owned by Panhandle	Owned by Columbia Oil
Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%, due October 1, 1950 (herein called "Existing Eastern Bonds")	None	$19,400,000
6% Promissory Notes (subordinated), due October 2, 1950 (herein called "Eastern Notes")	$4,945,500	$4,945,500
Common Stock (represented by Voting Trust Certificates)	114,900 shs.	114,900 shs.

A consolidated balance sheet as at December 31, 1933, of Eastern and its subsidiaries, and consolidated income accounts and summary of consolidated surplus accounts of [fol. 95] Eastern and its subsidiaries for the years ended December 31, 1932, and December 31, 1933, certified by Messrs. Arthur Anderson & Co., certified public accountants,

are attached as Schedule A to the Plan of Readjustment of Funded Debt and Capitalization of Eastern attached hereto.

The annual interest charge on the outstanding Existing Eastern Bonds amounts to $1,164,000, the annual sinking fund to $630,000, and the annual interest charge on the Eastern Notes to $593,460. The cash position and earnings prospects of Eastern, according to the statements set forth in the attached Plan of Readjustment of Eastern, are such that the service of its present funded debt probably cannot be continued, with the result that, unless such fixed charges are reduced, a receivership of Eastern is unavoidable. Such a receivership or a default on the Existing Eastern Bonds or Eastern Notes would undoubtedly precipitate proceedings to foreclose the mortgage securing the Existing Eastern Bonds. In view of the fact that the Eastern Notes are unsecured and are also expressly subordinated to the Existing Eastern Bonds, such a foreclosure would greatly endanger the position of the Eastern Notes and stock owned by Panhandle Corporation, and, consequently, the position of the Panhandle Notes which are secured thereby.

Plan of Readjustment of Eastern.—Under these circumstances, the Board of Directors of Eastern has adopted a Plan of Readjustment of Funded Debt and Capitalization, dated March 12, 1934, designed to reduce the fixed charges of Eastern and avoid a receivership of Eastern and a foreclosure of the mortgage securing the Existing Eastern [fol. 96] Bonds. A copy of such Plan of Readjustment is attached hereto, and reference is made thereto for a complete statement of its terms.

The treatment accorded by such Plan to the outstanding securities of Eastern may be summarized as follows:

Existing Securities	Securities to be Received under Plan
$19,400,000 Existing Eastern Bonds	$10,981,750 Modified Eastern Bonds; the entire Eastern Common Stock
$9,891,000 Eastern Notes	$7,418,250 Modified Eastern Bonds (at the rate of $750 of Modified Eastern Bonds for each $1,000 of Eastern Notes)
229,800 shs. Eastern Common Stock	$1,000,000 Modified Eastern Bonds; $1,600,000 Non-Interest Bearing Promissory Notes of Eastern, due September 1, 1936

One of the conditions imposed by Columbia Oil upon its assent to the Eastern Plan is the release by the stockholders of Panhandle Corporation, including the receivers of Missouri-Kansas Pipe Line Company, of certain alleged claims against Columbia Oil, Eastern, Columbia Gas & Electric

Corporation and certain of their respective subsidiaries, officers, and directors. Another condition imposed by Columbia Oil is the cancellation by the receivers of Missouri-Kansas Pipe Line Company and by Columbia Oil of certain rights, obligations, and claims relating to the purchase or sale of gas by Columbia Oil and Missouri-Kansas Pipe Line Company from Eastern. Such receivers now hold 25%, and upon consummation of the Eastern Plan will hold 37½%, of the capital stock of Panhandle Corporation and represent a large number of persons who, through Missouri-Kansas Pipe Line Company, have invested substantial sums in the Panhandle Eastern Pipe Line enterprise. There is attached hereto a copy of the agreement, dated March 12, 1934, between Panhandle Corporation and [fol. 97] Columbia Oil, relating to the assent to the Eastern Plan by Panhandle Corporation and Columbia Oil, to which reference is made for a complete statement of the terms of such assents and of the further agreements between Panhandle Corporation and Columbia Oil regarding such Plan.

The imposition of these conditions has made it necessary that the stockholders of Panhandle Corporation be given a participation in the benefits of the Eastern Plan, as hereinafter indicated.

Offer of Panhandle Corporation to Holders of Panhandle Notes.—In view of the impending maturity of the Panhandle Notes and of their lien on the securities of Eastern owned by Panhandle Corporation, it is essential to the success of the Eastern Plan that the holders of the Panhandle Notes be put in a position where they can participate directly in such Plan and assent thereto.

Consequently, Panhandle Corporation hereby offers (subject to the conditions set forth below) to the holders of Panhandle Notes the right to exchange such Notes for a like principal amount of Eastern Notes now pledged as part of the collateral securing the Panhandle Notes. Such exchange will enable the holders of the Panhandle Notes to assent to the Eastern Plan with respect to the Eastern Notes so to be received by them and thus to receive, in exchange for each $1,000 of Eastern Notes, $750 of Modified Eastern Bonds. Such exchange will also release from the lien of the Panhandle Notes the Eastern stock owned by Panhandle Corporation and enable Panhandle Corporation

to assent to the Eastern Plan with respect to such stock. It is expected that if the Eastern Plan and the Offer of Panhandle Corporation are carried out, Panhandle Corpora-
[fol. 98] tion will be dissolved and its assets remaining after the settlement of its debts distributed to its stockholders, thus giving them the participation in the benefits of the Eastern Plan referred to above.

In the event of the consummation of the Eastern Plan, the six months' interest accrued to March 2, 1934, on the Eastern Notes to be exchanged for Panhandle Notes as above indicated is to be paid. The interest upon the Modified Eastern Bonds at the rate called for by the Eastern Plan (namely, for the years 1934, 1935, and 1936, fixed interest at the rate of 4% per annum and income interest at the rate of 2% per annum, and thereafter fixed interest at the rate of 6% per annum) will commence on January 1, 1934. Holders of Panhandle Notes who accept the above Offer of Exchange and assent to the Eastern Plan will, upon consummation of the Eastern Plan, be entitled to receive, in cash, the six months' interest accrued to March 2, 1934, on the Eastern Notes to be received by them under the Offer of Exchange, less the amount of interest, at the rate of 6% per annum, accrued to March 2, 1934, and unpaid on the Modified Eastern Bonds delivered in exchange for such Eastern Notes under the Eastern Plan.

Conditions to Carrying out of Offer.—The carrying out of the above Offer is conditioned upon the following:

(a) The acceptance of the Offer by the holders of at least 98% (or such lesser percentage as Panhandle Corporation may determine) of the outstanding Panhandle Notes, within such period of time as Panhandle Corporation may determine; and

(b) The consummation of the Eastern Plan.

[fol. 99] Directors of Eastern and Panhandle Corporation.—Four of the present eight directors of Eastern were nominated by Columbia Oil, namely, Burt R. Bay (President of Eastern), Thomas B. Gregory (Vice President and Director of Columbia Oil and of Columbia Gas & Electric Corporation), Charles A. Munroe (President and Director of Columbia Oil and Director of Columbia Gas & Electric Corporation), and Thomas R. Weymouth (Vice President of Columbia Oil and of Columbia Gas & Electric Corporation). The other four directors were nominated by Pan-

handle Corporation, namely, Joseph A. Bower (Executive Vice President and Director of Chemical Bank & Trust Company), J. H. Hillman, Jr. (President and Director of Pennsylvania Industries, Inc.), Dean Mathey (Dillon, Read & Co.), and H. F. Reindel (Cotton, Franklin, Wright & Gordon). In the event of the consummation of the Eastern Plan, it is contemplated that the latter four directors will resign. Columbia Oil is the owner of certain of the Eastern Securities. Chemical Bank & Trust Company and Dillon, Read & Co. are owners of Panhandle Notes. J. H. Hillman, Jr., is an officer and/or Director and/or stockholder of various corporations which are owners of Panhandle Notes and/or Panhandle stock. Cotton, Franklin, Wright & Gordon are counsel for Panhandle Corporation.

The present directors of Panhandle Corporation are J. H. Hillman, Jr. (President), Thurlow G. Essington (Receiver of Missouri-Kansas Pipe Line Company, appointed by the United States District Court for the Northern District of Illinois, Eastern Division), Irving Herriott (of counsel for a Stockholders' Protective Committee of Missouri-[fol. 100] Kansas Pipe Line Company), H. F. Reindel (of counsel for Panhandle Corporation), and Thomas Watson (of counsel for Hillman Investment Company).

Method of Assent by Holders of Panhandle Notes.—Holders of Panhandle Notes who desire to accept the above Offer should deliver such Panhandle Notes to Chemical Bank & Trust Company, Corporate Trust Department, 165 Broadway, New York, N. Y., together with the enclosed Letter of Transmittal and Power of Attorney, properly executed, with signature guaranteed as therein indicated, authorizing Chemical Bank & Trust Company to accept the Offer of Panhandle Corporation and to surrender such Panhandle Notes to Panhandle Corporation for cancellation, against delivery to Chemical Bank & Trust Company for account of such Noteholders of an equal principal amount of Eastern Notes. Such Letter of Transmittal and Power of Attorney also authorize Chemical Bank & Trust Company to assent to the Eastern Plan with respect to the Eastern Notes thus to be received and, upon consummation of the Eastern Plan, to exchange such Eastern Notes for Modified Eastern Bonds at the rate of $750 of Modified Eastern Bonds for each $1,000 of Eastern Notes. Should the Offer of Panhandle Corporation and the Eastern Plan not be

carried out in accordance with their respective terms on or before December 31, 1934, the depositors of Panhandle Notes will be entitled to the return of the deposited Panhandle Notes without expense to them.

The above Offer of Panhandle Corporation will expire at the close of business on June 30, 1934, or such later [fol. 101] date as Panhandle Corporation may determine.

No commission or other remuneration is to be paid to any person, firm, or corporation as compensation for obtaining acceptances of this Offer.

Panhandle Corporation, by J. H. Hillman, Jr., President.

NOTE.—The Notes should be accompanied by the coupons maturing March 15, 1934.

Panhandle Corporation Balance Sheet, at December 31, 1933

Assets

Securities and Cash—Pledged with Chemical Bank & Trust Company, Trustee, to Secure Payment of Corporation's Two-Year 6% Collateral trust notes:	
Cash on deposit with trustee	$4,886.81
Securities of Panhandle Eastern Pipe Line Company:	
6% Promissory Notes, due October 2, 1950	4,945,500.00
114,900 Shares Capital Stock (Voting Trust Certificates)	10,244,209.15
Of the above stock, 5,000 shares were received in exchange for 1,000 shares of Panhandle Corporation, and were valued by the Directors at the time of acquisition at the value shown on October 31, 1930, on the books of Panhandle Eastern Pipe Line Company. This value was subsequently written down by order of the Directors to reflect a corresponding write-down of assets of Panhandle Eastern Pipe Line Company made by that corporation on its books in March 1932. 109,900 shares were acquired for cash at $5.00 per share.	
Total Assets Pledged with Trustee	15,194,595.96
Accrued interest on Panhandle Eastern Pipe Line Company 6% notes	97,252.50
Cash	163.94
	15,292,012.40

[fol. 102]

Liabilities

Funded Debt:	
Two-Year 6% Collateral Trust Notes, due March 15, 1933	$4,940,000.00
Consent has been requested from the holders thereof for the extension of these Notes for one (1) year, to March 15, 1934. At February 15, 1934, holders of $4,877,000.00 of the Notes had assented to the extension.	

Current Liabilities:		
Notes Payable:		
Secured by deposit of 700 shares of Preferred Stock and 350 shares of Common Stock of Kentucky Natural Gas Corporation, borrowed from Missouri-Kansas Pipe Line Company	$23,530.00	
Unsecured Demand Notes	29,033.20	
	52,563.20	
Accounts Payable	12,550.11	
Accrued Interest Payable	90,776.49	
		$155,889.80
Missouri-Kansas Pipe Line Company:		
Securities borrowed—Pledged as collateral with Notes Payable (as above)—700 shares of Preferred Stock and 350 shares of Common Stock of Kentucky Natural Gas Corporation		—0—
Capital Stock:		
Authorized and Outstanding, 1,000 shares of a par value of $10.00 per share	10,000.00	
Capital Surplus:		
Through valuation of Panhandle Eastern Pipe Line Company Stock	9,684,709.15	
Paid-In Capital	637,879.95	
	10,322,589.10	
[fol. 103]		
Operating Deficit:		
Balance at March 31, 1933	$123,767.91	
Operating Loss for period from April 1, 1933, to December 31, 1933	12,698.50	
	$136,466.50	
		$10,196,122.60
		$15,292,012.40

We have audited the accounts and records of Panhandle Corporation, a Maryland corporation, and certify that, in our opinion, the above Balance Sheet correctly sets forth the financial condition of the Company at December 31, 1933.

D. G. Sisterson & Company,
Certified Public Accountants.

Pittsburgh, Pa., February 26, 1934.

Panhandle Eastern Pipe Line Company—Plan of Readjustment of Funded Debt and Capitalization.

Dated, March 12, 1934.

Panhandle Eastern Pipe Line Company (herein called "Eastern") proposes to the holders of its outstanding securities a readjustment of its funded debt and capitalization in the manner and subject to the conditions herein set forth.

I

Condition of the Company

The funded debt and capitalization of Eastern are as follows:

Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%, due October 1, 1950 (herein called "Existing Eastern Bonds")	$19,400,000
6% Promissory notes, due October 2, 1950 (herein called "Eastern Notes")	$9,891,000
[fol. 104] Common Stock, without par value (represented by Voting Trust Certificates) ..... shares	229,800

There are attached hereto as Schedule A, a consolidated balance sheet of Eastern and its subsidiaries, as at December 31, 1933, and consolidated income accounts and summary of consolidated surplus accounts of Eastern and its subsidiaries for the years ended December 31, 1932, and December 31, 1933, certified by Messrs. Arthur Andersen & Co., certified public accountants.

The semiannual interest charges, payable in March and April 1934 on the above Bonds and Notes amount to $878,730 and the semiannual sinking fund payment on the above Bonds, due February 18, 1934, amounts to $315,000. The above-mentioned balance sheet shows cash and receivables, at December 31, 1933, of about $1,131,500, and of current liabilities, exclusive of accrued interest, of about $223,900, leaving a balance of about $907,600, plus any net income after December 31, 1933, to meet interest and sinking fund payments of $1,193,730 due in February, March, and April of this year and substantially similar amounts becoming due in August, September, and October of this year and to maintain adequate working capital, particularly during the summer months when the cash receipts of Eastern are at their lowest point.

Owing to the depression, the demand for natural gas, both for industrial and domestic purposes, in the territory served by Eastern, has not been sufficient to permit Eastern to develop its earnings to the point where they would cover its present fixed charges. Consequently, in the opinion of the management of Eastern, the earnings pros-

pects and cash position of Eastern are such that the serv-
[fol. 105] ice of its present funded debt probably cannot be continued, with the result that unless such fixed charges are reduced a receivership of Eastern is unavoidable. Such a receivership or a default in the Existing Eastern Bonds or Eastern Notes would undoubtedly precipitate proceedings to foreclose the mortgage, securing the Existing Eastern Bonds.

In order to meet this situation the readjustment set forth in this Plan is proposed and is believed to be in the interests of all of the security holders of Eastern.

II

Capitalization of Eastern Upon Consummation of the Plan

Upon consummation of the Plan, the funded debt and capitalization of Eastern will be as follows:

	Authorized	Outstanding
Twenty-Year Mortgage Bonds, Series A, due October 1, 1950 (herein called "Modified Eastern Bonds")	$19,400,000	$19,400,000
Noninterest Bearing Promissory Notes, due September 1, 1936	$1,600,000	$1,600,000
Common Stock.....shares	[1]200,000	[1]200,000

[1] Or such other number of shares with or without par value as Eastern may determine.

The Modified Eastern Bonds above referred to are to be the Existing Eastern Bonds with certain terms thereof and of the Indenture and Supplemental Indenture under which they are issued modified by agreement with the present holders thereof. The Modified Eastern Bonds will bear interest at the present rate of 6% per annum, except that for the years 1934, 1935, and 1936 they will bear fixed inter-
[fol. 106] est at the rate of 4% per annum and an additional 2% per annum payable when earned under the conditions to be described in the Second Supplemental Indenture and in any event at the maturity or earlier redemption of the Modified Eastern Bonds. A description of the terms of the Modified Eastern Bonds and of the security therefor is set forth in Schedule B.

III

Basis of Readjustment

1. The holders of $19,400,000 principal amount of Existing Eastern Bonds will be entitled, in lieu of their present

holdings of Existing Eastern Bonds, to receive and/or retain, upon consummation of the Plan:

$10,981,750 principal amount of Modified Eastern Bonds; and

The entire amount of Common Stock to be authorized.

2. The holders of $9,891,000 principal amount of Eastern Notes will be entitled, in lieu of their present holdings of Eastern Notes, to receive and/or retain, upon consummation of the Plan:

$7,418,250 principal amount of Modified Eastern Bonds.

3. The holders of 229,800 shares of Common Stock of Eastern will be entitled, in lieu of their present holdings of such Common Stock, to receive and/or retain, upon consummation of the Plan:

$1,000,000 principal amount of Modified Eastern Bonds; and

$1,600,000 principal amount of Non-Interest Bearing Promissory Notes of Eastern, due September 1, 1936.

[fol. 107] IV

Adjustment of Interest and Sinking Fund

In the event of the consummation of the Plan, interest is to be paid by Eastern upon the Eastern Notes through March 2, 1934. Interest on the Modified Eastern Bonds at the rate provided in Schedule B (namely, fixed interest at the rate of 4% per annum and income interest at the rate of 2% per annum for the years 1934, 1935, and 1936) will commence January 1, 1934. Holders of Eastern Notes will upon consummation of the Plan be entitled to receive in cash the interest accrued on their Notes to March 2, 1934, less the amount of interest, at the rate of 6% per annum, accrued to March 2, 1934, and unpaid on the Modified Eastern Bonds delivered in exchange therefor. The Sinking Fund instalment of $315,000 due upon the Existing Eastern Bonds on February 18, 1934, is to be waived and any part of such instalment which may have been paid is to be returned to Eastern and the Sinking Fund upon the Modified Eastern Bonds is to be payable as and when provided in Schedule B.

V

Method of Carrying Out the Plan

Columbia Oil & Gasoline Corporation is the holder of the entire outstanding issue of $19,400,000 principal amount of Existing Eastern Bonds, of $4,945,500 principal amount of Eastern Notes and 114,900 shares of Common Stock of Eastern. It is contemplated that the Plan is to be carried out by Columbia Oil & Gasoline Corporation assenting to the change in the terms of the Existing Eastern Bonds [fol. 108] called for by the Plan and retaining such of the resulting Modified Eastern Bonds as it will be entitled to hold under the terms of the Plan and delivering to Eastern the Eastern Notes and such of the Modified Eastern Bonds as are to be delivered by Eastern to the remaining security holders of Eastern. The remaining security holders of Eastern are to surrender their securities in exchange for the securities issuable to them under the terms of the Plan. The Voting Trustees for the Common Stock of Eastern will deliver the securities received by them under the Plan in lieu of such Common Stock to the holders of the Voting Trust Certificates. Eastern may, however, carry out the Plan by any other method determined by it.

VI

Conditions of Consummation of the Plan

Consummation of the Plan shall be conditioned upon the assent by the holders of all the outstanding securities of Eastern to the Plan, in the manner hereinafter provided, on or before June 30, 1934, or such later date, not later than December 31, 1934, fixed from time to time by Eastern.

VII

Method of Assent

Holders of Existing Eastern Bonds and Common Stock of Eastern may assent to the Plan by executing and delivering to Eastern an assent in such form as Eastern may determine.

Holders of Eastern Notes may assent to the Plan by executing and delivering to Eastern or to Chemical Bank & Trust Company, 165 Broadway, New York, N. Y., an assent

[fol. 109] and power of attorney in form approved by Eastern, together with such Eastern Notes.

No commission or other remuneration is to be paid to any person, firm, or corporation as compensation for obtaining assents to this Plan.

Panhandle Eastern Pipe Line Company, by B. R. Bay, President.

Schedule A.—Panhandle Eastern Pipe Line Company and Subsidiary Companies

Consolidated Balance Sheet as at December 31, 1933

Assets

Plant, Property, Contracts, Leaseholds, Etc.:		
Texas to Indiana pipe-line system—At cost	$39,460,485.01	
Other wells, leaseholds, pipe lines, compressors, etc.—At cost	3,170,712.02	
Gas purchase and sales contracts—At values assigned by the Board of Directors	3,053,391.53	
		$45,684,588.56
Investments:		
Investment in capital stock of subsidiary companies not consolidated—51% owned—At cost (book value $55,724.65 after deducting abandoned property)	187,124.68	
Miscellaneous investments	600.00	
		187,724.68
Bond Discount and Expense in Process of of Amortization		1,702,747.90
Prepaid Accounts and Deferred Charges:		
Property and leaseholds abandoned	368,201.83	
Prepaid lease rentals and insurance	32,199.89	
Other prepaid and unadjusted items	93,213.01	
		493,614.73

[fol. 110]

Current Assets:		
Cash on hand and in banks	$496,743.89	
Demand note, noninterest bearing, of Indiana Gas Transmission Corporation	300,000.00	
Accounts and notes receivable	334,771.52	
Materials and supplies (including construction materials) at book values	269,574.03	
		$1,401,089.44
		49,469,765.31

Liabilities

Capital Stock and Surplus:		
Capital stock—		
Authorized 230,000 shares without par value; issued and outstanding 229,800 shares at declared value	$1,199,000.00	
Capital surplus (including paid-in surplus of $19,285,867.47)	19,294,624.55	
Earned surplus (*deficit*)	*2,492,577.54*	
		$18,001,047.01

Funded Debt:		
Panhandle Eastern Pipe Line Company—Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%, due October 1, 1950 (sinking fund payments $630,000 per year until 1945; $6,000 less each year thereafter)—		
Total issued	20,000,000.00	
Less—Bonds retired and cancelled	600,000.00	
	19,400,000.00	
6% Promissory Notes, due October 2, 1950	9,891,000.00	
		29,291,000.00
Deferred Liabilities:		
Customers' meter deposits	2,255.00	
Other deferred liabilities	134,825.25	
		137,080.25
Due to Affiliated Companies		37,500.00
Current Liabilities:		
Accounts payable	56,145.93	
Accrued interest	487,264.41	
Accrued state and local taxes	167,745.72	
		711,156.06
[fol. 111]		
Reserves:		
Depreciation and amortization	$1,228,129.56	
Uncollectible accounts	7,245.27	
Other reserves	56,607.16	
		$1,291,981.99
		49,469,765.31

Consolidated Income Accounts for the Years Ended December 31, 1932, and December 31, 1933

	Year ended December 31—	
	1933	1932
Gross Earnings:		
Gas Sales	$2,416,397.62	$1,788,359.33
Pipe Line Rentals and Miscellaneous	168,999.17	113,091.82
Total Gross Earnings	2,585,396.79	1,901,451.15
Operating Expenses and Taxes:		
Operation	888,273.35	910,304.38
Maintenance	110,831.40	155,070.93
Taxes	262,375.23	219,459.98
Total Operating Expenses and Taxes	1,261,479.98	1,284,835.29
Net Earnings from Operations before Provision for Depreciation and Amortization of Gas Rights and Leases	1,323,916.81	616,615.86
Other Income	8,234.75	28,237.94
Net Earnings before Provision for Depreciation and Amortization of Gas Rights and Leases	1,332,151.56	644,853.80

Schedule A etc.—Continued

Interest Deductions:		
Interest on Funded Debt—		
Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%	1,177,300.00	1,200,000.00
6% Promissory Notes	593,460.00	559,473.00
Amortization of Debt Discount and Expense (see auditors' report)	102,702.87	104,898.59
Interest on Unfunded Debt	1,091.79	878.31
Less Interest Charged to Construction	.....	*456,443.96
Total Interest Deductions	*1,874,554.66*	*1,408,805.94*

* The period from the inception of the Company to March 31, 1932, has been treated by the Company as the period of construction of the pipe-line system and interest, taxes, and amortization of debt discount and expenses during this period were capitalized. The total net income for this period (including the three months ended March 31, 1932, for which a loss of $4,947.19 was sustained) was $48,604.69, after deducting $264,072.64 provision for depreciation and amortization of gas rights and leases, but with no deduction for interest, taxes, or amortization of debt discount and expenses. Such net income was credited to the cost of construction of the pipe line.

[fol. 112]

Consolidated Income Accounts for the Years Ended September 31, 1932, and December 31, 1933—Continued

	Year ended December 31—	
	1933	1932
Net Loss before Provision for Depreciation and Amortization of Gas Rights and Leases	$542,403.10	$763,951.42
Provision for Depreciation and Amortization of Gas Rights and Leases	759,713.24	582,574.44
Net Loss	1,302,116.34	1,346,526.58
Net loss of Main Line Operations for Three Months ended March 31, 1932, Charged to Construction	.....	[1]4,947.19
Net Loss carried to Surplus	1,302,116.34	1,341,579.39

Summary of Consolidated Surplus Accounts for Years Ended December 31, 1932, and December 31, 1933

	Year ended December 31—	
	1933	1932
Earned surplus (deficit) balance beginning of year	$1,105,754.84	$234,049.13
Net loss for the year	1,302,116.34	1,341,579.39
	2,407,871.18	1,107,530.26
Surplus direct credits or charges:		
Unamortized debt discount and expense on bonds retired	54,706.36	.....
Premium on bonds retired	30,000.00	.....
Miscellaneous (net)	.....	1,775.42
Earned surplus (deficit) balanced end of year	2,492,577.54	1,105,754.84
Capital surplus balanced end of year	19,294,624.55	19,285,867.47

To the Board of Directors, Panhandle Eastern Pipe Line Company:

We have made an examination of the consolidated balance sheet of the Panhandle Eastern Pipe Line Company and subsidiary companies as at December 31, 1933, and of the statement of consolidated income and surplus for the two years ended that date. In connection therewith we [fol. 113] examined or tested accounting records of the companies and other supporting evidence and obtained information and explanations from officers and employees of the companies; we also made a general review of the accounting methods and of the operating and income accounts for the two years, but we did not make a detailed audit of the transactions.

The foregoing financial statements have been prepared on the basis of our acceptance of the provisions for depreciation and amortization of gas rights and leases as determined by the companies. The company has amortized debt discount and expense on a straight-line basis, which method does not give expression to the retirement of bonds through the operations of the sinking fund. Unamortized debt discount and expense of $54,706.36 applicable to bonds retired through the operations of the sinking fund during 1933, together with premium paid of $30,000.00, has been charged direct to surplus by the company.

Subject to the comments in the preceding paragraph, in our opinion, based upon the examination referred to above, the foregoing consolidated balance sheet and related statement of income and surplus fairly present, in accordance with accepted principles of accounting consistently maintained by the companies for the two years under review, the financial position of Panhandle Eastern Pipe Line Company and subsidiary companies at December 31, 1933, and the results of their operations for the two years ended that date.

Arthur Andersen & Co., Certified Public Accountants.

Kansas City, Mo., February 8, 1934.

[fol. 114] Schedule B—Provisions of Modified Eastern Bonds Upon Consummation of Eastern Plan

The Modified Eastern Bonds are to be the Existing Eastern Bonds presently outstanding, modified so that the terms

thereof will conform to the terms as herein set forth. The Existing Eastern Bonds are outstanding as Bonds of Series A under the Mortgage Trust Indenture, dated as of October 1, 1930 (as supplemented and amended by a Supplemental Indenture, dated as of March 27, 1931), of Panhandle Eastern Pipe Line Company to City Bank Farmers Trust Company and James M. Kemper (successor to Walter Scott McLucas), as Trustees. Such Indenture is to be modified by the execution of a Second Supplemental Indenture so as to conform to the terms and provisions herein set forth with such other changes in the Indenture as may be approved by Columbia Oil & Gasoline Corporation and Panhandle Corporation (the Indenture, as modified by the Supplemental Indenture and as to be modified by the Second Supplemental Indenture being herein referred to as the "Amended Indenture"). Eastern may deliver under the Plan Bonds whose text conforms to the modifications herein provided for or old Bonds stamped with a notation of such modifications and the execution of such Second Supplemental Indenture. Subject to the provisions hereof and of the foregoing Plan, the Modified Eastern Bonds and Amended Indenture shall be in such form and have such terms as may be approved by Columbia Oil & Gasoline Corporation and Panhandle Corporation.

[fol. 115] The following is a summary of the terms of the Modified Eastern Bonds and a description of the security therefor:

1. Date and Form.—The Modified Eastern Bonds shall be known as Twenty-Year Mortgage Bonds, Series A. They shall be dated as of October 1, 1930, and shall mature October 1, 1950; they shall be coupon Bonds, registerable as to principal, in denominations of $1,000, $500 and $250 or any multiple of $1,000. Bonds of any denomination other than $1,000 shall be exchangeable for an equal aggregate principal amount of Bonds of the denomination of $1,000.

2. Interest and Sinking Fund.—The Modified Eastern Bonds shall bear fixed interest, payable semi-annually on April 1 and October 1 of each year, beginning April 1, 1934, at the rate of 4% per annum for the period from January 1, 1934, to December 31, 1936, and thereafter at the rate of 6% per annum. The Bonds shall also bear additional interest at the rate of 2% per annum for the period from

January 1, 1934, to December 31, 1936 (herein called "income interest"), payable on April 1, 1935, and April 1, 1936, to the extent that consolidated net earnings of Eastern and its subsidiaries for the preceding calendar year, after all charges, including fixed interest, depreciation and depletion, as determined by the Board of Directors, are sufficient for the payment of such income interest for such year, and payable thereafter to the extent that the annual Service Fund provided for below is sufficient for such payment (after providing for fixed interest as provided below) and payable in any event at maturity or earlier redemption of the Bonds.

[fol. 116] The Modified Eastern Bonds are to be entitled to a Service Fund each year, beginning with the year 1937, which shall amount to the sum provided in (a) or (b) below, whichever shall be less, namely:

(a) the amount of $1,500,000 plus the amount of any accumulated and unpaid income interest for the period from January 1, 1934, to December 31, 1936, or

(b) the sum of—

(i) the amount of fixed interest becoming payable on the Bonds during each such year, plus

(ii) one-half of such portion of the consolidated earnings of Eastern and its subsidiaries for the preceding year, after fixed interest, available for depreciation and depletion as are actually appropriated for depreciation and depletion by the Board of Directors, plus

(iii) the amount of consolidated net earnings of Eastern and its subsidiaries for such preceding year, after fixed interest, depreciation, and depletion;

provided that if in any year (beginning with the year 1937) the Service Fund payable as above provided shall be less than $1,500,000, the deficit shall accumulate and shall be added in subsequent years to the maximum amount specified in (a) above for payments into the Service Fund until such deficit shall have been paid. In the event that any Modified Eastern Bonds are issued under the Amended Indenture in addition to the $19,400,000 thereof to be outstanding upon consummation of the Plan, the amount of $1,500,000 referred to in (a) above shall thereafter be proportionately increased.

[fol. 117] The Service Fund shall be appropriated by the Trustee in each year to the following payments, in the following order, and the amount so appropriated shall be paid by Eastern to the Trustee on or before the dates indicated:

1st, To the payment of fixed interest becoming due on the Bonds during such year, such amount to be paid to the Trustee in semiannual installments on or before April 1 and October 1 of such year;

2nd, To the payment of any accumulated and unpaid income interest on the Bonds, such amounts to be paid to the Trustee on or before April 1 of such year, and to be paid by the Trustee to Bondholders on such April 1; and

3rd, To the payment of a Sinking Fund for the purchase of Bonds, such amount to be paid to the Trustee in two equal installments (as nearly as may be), on or before February 18 and August 21 of such year.

The amount paid into the Sinking Fund shall be applied by the Trustee to the purchase of Bonds as follows: The Trustee shall advertise for tenders by publishing a call for such tenders once a week for four successive weeks in a daily newspaper published and of general circulation in the Borough of Manhattan, City of New York, the first publication to be not less than thirty nor more than thirty-five days prior to April 1 or October 1, as the case may be, and by mailing a copy of such call to Bondholders who have filed their address with the Trustee for such purpose. All tenders shall be opened by the Trustee on the Sinking Fund payment date and the Trustee shall accept the lowest [fol. 118] tenders thus made, to the extent necessary to exhaust the Sinking Fund, provided that the Trustee shall not purchase Bonds at a price in excess of 100 and accrued interest. Any moneys in the Sinking Fund not so expended shall be retained by the Trustee for account of the next succeeding instalment of the Sinking Fund and shall be credited against Eastern's obligation with respect to such instalment.

Eastern may increase any Sinking Fund payment over the amount above required to be paid or may make payments into the Sinking Fund, in addition to those above required to be made, on other than Sinking Fund payment dates, such moneys to be applied by the Trustee to the re-

tirement of Bonds, after thirty days' advertisement for tenders, as above provided; any such additional payment into the Sinking Fund shall be credited against Eastern's obligation with respect to succeeding Sinking Fund instalments. Eastern shall not, however, have the right to tender Bonds to the Trustee for sale to the Sinking Fund.

The income interest on the Modified Eastern Bonds is to be represented by coupons calling for ½% income interest instalments, each payable as and when above provided, and any amount available for the payment of such income interest shall be paid out against the surrender of such coupons, any balance of such amount which is not sufficient for the payment of a full coupon to be carried forward and added to any amount thereafter becoming available for the payment of income interest.

3. Place of Payment. Tax provisions.—The Modified Eastern Bonds shall be payable both as to principal and [fol. 119] interest at the principal office of the Trustee in New York City. Interest on the Modified Eastern Bonds shall be payable without deduction for any Federal income tax not in excess of two per cent thereof which Eastern or the Trustee may be required or permitted to pay thereon or to retain therefrom under any present or future law of the United States. Eastern is to reimburse the owner of any Modified Eastern Bonds residing in Pennsylvania for the Pennsylvania Four Mills Tax assessed and paid with respect to such Bonds and is to reimburse any such owner residing in Wisconsin the amount of any Wisconsin income tax, not in excess of 6% of the interest received on such Bonds in any year, assessed and paid with respect to such interest.

4. Redemption of Bonds.—The Modified Eastern Bonds shall be redeemable in whole or in part, at the option of Eastern, at any time upon thirty days' prior published notice, on or before October 1, 1945, at 105; thereafter and on or before October 1, 1946, at 104; thereafter and on or before October 1, 1947, at 103; thereafter and on or before October 1, 1948, at 102; thereafter and on or before October 1, 1949, at 101; and thereafter until maturity at 100; plus accrued interest at the rate of 6% per annum in each case.

5. Security.—The Modified Eastern Bonds will be secured by a lien (through direct mortgage or by the pledge of de-

mand mortgages, indebtedness and capital stock of subsidiaries, as indicated below) upon the Panhandle Eastern Pipe Line System owned by Eastern directly or through subsidiaries and extending from the Panhandle District of Texas through the States of Texas, Oklahoma, Kansas, [fol. 120] Missouri, and Illinois to the Illinois-Indiana State line. The Pipe Line System includes the main line (owned entirely by Eastern except for the portion crossing the State of Illinois, which is owned by Panhandle Illinois Pipe Line Company, a wholly owned subsidiary), ranging from twenty to twenty-four inches in diameter and having a length of more than 850 miles; together with lateral transmission lines (owned by Eastern and Panhandle Illinois Pipe Line Company) extending to the communities served from the main pipe line, field and gathering lines (owned by Eastern) in the producing areas in Texas, Oklahoma, and southwestern Kansas, the natural-gas production from approximately 181,285 acres (controlled through leases or otherwise by Texas-Interstate Pipe Line Company, a wholly owned subsidiary of Eastern), of which about 11,289 acres are operated, and a one-half interest in the natural gas production from approximately 29,485 acres (similarly controlled), of which about 5,679 acres are operated.

The Pipe Line System is to be subject to the lien of the Amended Indenture by a direct mortgage on that part of the System owned directly by Eastern and by the pledge of the entire capital stock and indebtedness (except indebtedness secured by lien on newly acquired property existing or created at the time of acquisition thereof and except current liabilities) of Panhandle Illinois Pipe Line Company and Texas-Interstate Pipe Line Company. Indebtedness of these two subsidiaries in excess of $500,000 must be represented, so far as legally permissible, by mortgage bonds payable on demand and pledged under the Amended Indenture. The covenant of Eastern, now contained in the [fol. 121] Indenture, to mortgage certain after-acquired property is to be modified so as to exclude after-acquired tangible personal property and the covenant of Eastern to record the Indenture as a chattel mortgage is to be omitted from the Amended Indenture.

The total cost of construction completed to April 1, 1932, of the Pipe Line System which is to be subject to the lien of the Amended Indenture, as certified by Messrs. Brokaw, Dixon, Garner & McKee, Geologists and Petroleum Engi-

neers, and by Messrs. Arthur Andersen & Co., certified public accountants, by certificates dated June 1, 1932, was $39,099,745.31.

Eastern and certain of its subsidiaries own production, transmission, and distribution properties in the vicinity of Kansas City, known as the "local area properties", and certain distribution plants adjacent to the main pipe line, which properties are not now subject to the lien of the Indenture. These properties are not to be subject to the lien of the Amended Indenture.

Articles Seventh and Eighth of the Indenture are to be omitted from the Amended Indenture and the covenants of Eastern therein contained are to be waived. Under the terms of these Articles funds for the construction of the present pipe line were deposited with the Trustee and Eastern covenanted that if the pipe line should cost less than $40,000,000 it would either invest the difference in property subject to the lien of the Indenture or retire Series A Bonds to such an extent that the cost of the pipe line should be at least twice the principal amount of Series A Bonds outstanding.

[fol. 122] 6. Issue of Additional Bonds.—Additional Bonds, over and above the $19,400,000 principal amount of Modified Eastern Bonds (Series A) presently to be outstanding, may be issued under the Amended Indenture in one or more series, at such interest rates, with such redemption terms and with such other provisions (within the limitations to be set forth in the Amended Indenture) as the Board of Directors may from time to time determine. The Amended Indenture will provide, in substance, that, subject to the limitations to be contained therein, such additional Bonds may be issued for the following purposes, among others: (1) for the refunding, acquisition, or retirement of Bonds of any series or of underlying mortgage obligations of Eastern or of refundable prior charges on assets of any pledged company (i. e., a company at least 95% of whose equity stock is owned by Eastern and pledged under the Amended Indenture), par for par; (2) in principal amounts not exceeding 50% of the cost or fair value of additional fixed assets acquired or constructed by Eastern, or by any pledged company, or of equity stock of any pledged company acquired by Eastern, subsequently to December 31, 1933, with certain limitations (to be set forth in

the Amended Indenture) upon the issue of Bonds against the acquisition or construction of additional fixed assets subject to existing liens or against the acquisition of equity stock subject to prior charges on assets; or (3) to provide cash to be deposited with the Trustee to be withdrawn for one or more of the foregoing purposes; provided, however, that no additional Bonds may be issued for any purposes except those set forth in (1) above unless consolidated net [fol. 123] earnings of Eastern and its subsidiaries, after depreciation and depletion, available for interest (as to be defined in the Amended Indenture), during twelve consecutive months ended not more than 90 days prior to the date of issuance of such additional Bonds shall have been not less than one and three-fourths times the consolidated annual charges on consolidated funded indebtedness (as to be defined in the Amended Indenture) to be outstanding immediately after the issuance of such additional Bonds.

7. Release of Mortgaged or Pledged Property.—The Amended Indenture is to provide for the release of mortgaged property or pledged securities or indebtedness, when no longer needed in the business of Eastern, only (except in the case of releases of property not exceeding $5,000 in value in any one year) if such property or securities or indebtedness have been sold or exchanged for not less than their fair value, as determined by the Board of Directors of Eastern or taken by right of eminent domain; the proceeds of such sale or exchange, if in the form of property or securities, must be subjected to the lien of the Amended Indenture, or, if in the form of cash, must be deposited with the Trustee. Cash so deposited may be withdrawn (1) to reimburse Eastern or any pledged company for 100% of the cost or fair value of additional fixed assets acquired or constructed by it subsequent to December 31, 1933; (2) to reimburse Eastern for the cost or fair value of equity stock of any pledged company acquired by it subsequent to December 31, 1933; (3) for the retirement of Bonds of any series by purchase (in the case of Series A Bonds, through the Trustee which is to call for tenders as in the case of the [fol. 124] Sinking Fund) or by redemption; or (4) for the acquisition or retirement of underlying mortgage obligations of Eastern or of refundable prior charges on assets of any pledged company. If more than one series of Bonds is outstanding, any proceeds of released property applied

to the retirement of Bonds shall be divided among the various series in proportion to the principal amount of Bonds of each series outstanding. Proceeds of insurance aggregating $25,000 or more must be deposited with the Trustee and may be withdrawn for similar purposes or to reimburse Eastern for the cost of repairs or replacements.

Agreement made this 12th day of March 1934 between Columbia Oil & Gasoline Corporation, a Delaware corporation (hereinafter called "Columbia Oil"), party of the first part, and Panhandle Corporation, a Maryland corporation (hereinafter called "Panhandle"), party of the second part,

Witnesseth:

Whereas Panhandle Eastern Pipe Line Company, a Delaware corporation (hereinafter called "Eastern"), has promulgated a Plan of Readjustment of Funded Debt and Capitalization, dated March 12, 1934 (hereinafter called the "Eastern Plan"), to which reference is hereby made; and

Whereas Columbia Oil is the holder of $19,400,000 principal amount of Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%, of Eastern (herein called "Existing Eastern Bonds"), $4,945,500 principal amount of 6% Promissory Notes of Eastern (herein called "Eastern Notes"), and 114,900 shares of Common Stock (represented by Vot- [fol. 125] ing Trust Certificates) of Eastern, all of which securities are pledged with Columbia Gas & Electric Corporation; and

Whereas Panhandle is the holder of $4,945,500 principal amount of Eastern Notes and 114,900 shares of Common Stock (represented by Voting Trust Certificates) of Eastern, all of which Eastern Notes and Stock are pledged under a Collateral Trust Indenture, dated March 15, 1931, from Panhandle to Chemical Bank & Trust Company, as Trustee to secure $4,940,000 principal amount of Two-Year 6% Collateral Trust Notes of Panhandle (hereinafter called the "Panhandle Notes"); and

Whereas the Panhandle Notes became due on March 15, 1933, and the holders of approximately 98% thereof have consented to the extension to March 15, 1934, of the maturity of such Notes; and

Whereas the outstanding stock of Panhandle is held in part by Henry T. Bush and C. Ray Phillips, as Receivers

of Missouri-Kansas Pipe Line Company appointed by the Chancery Court of the State of Delaware (herein called the "Mokan Receivers") and the balance by the Noteholders' Protective Committee of Missouri-Kansas Pipe Line Company, representing four depositors; and

Whereas Columbia Oil and Panhandle are satisfied with the provisions of the Eastern Plan and are willing to assent thereto with respect to the securities of Eastern owned by them, respectively, on the terms and conditions hereinafter set forth;

Now, Therefore, in consideration of the premises and of the mutual covenants and agreements herein contained, it is hereby agreed as follows:

[fol. 126] 1. Columbia Oil agrees, subject to the provisions of Article 3 hereof, to assent to the Eastern Plan with respect to the Existing Eastern Bonds and Eastern Notes held by it and to direct the Voting Trustees for the Eastern Common Stock to assent to the Eastern Plan with respect to the Eastern Common Stock represented by the Voting Trust Certificates held by Columbia Oil.

2. Panhandle will offer to the holders of Panhandle Notes an equal principal amount of Eastern Notes presently pledged as security for the Panhandle Notes in consideration of the surrender for cancellation and extinguishment of such Panhandle Notes, such Offer to be conditioned upon consummation of the Eastern Plan. In the event that the holders of 98% (or such lesser percentage as Panhandle may determine) of the outstanding Panhandle Notes shall accept said offer and shall assent to the Eastern Plan with respect to all of the Eastern Notes to be received by them under said offer, Panhandle agrees to assent to the Eastern Plan with respect to all securities of Eastern now owned by Panhandle except such of the Eastern Notes as shall be delivered to holders of Panhandle Notes under such offer of exchange, and to accept in exchange therefor the new securities deliverable under the Eastern Plan and to direct the Voting Trustees for the Eastern Common Stock to assent to the Eastern Plan with respect to the Eastern Common Stock represented by the Voting Trust Certificates held by Panhandle.

3. Columbia Oil shall not be subject to any obligation or liability hereunder, nor shall any assent which Columbia

Oil may give to the Eastern Plan become effective or binding unless

[fol. 127] (a) Panhandle and its stockholders, including the Mokan Receivers or their respective successors, such Receivers acting with the approval of the Court of Chancery of the State of Delaware, shall execute and deliver to Columbia Oil, Columbia Gas & Electric Corporation (a Delaware corporation) and their respective subsidiaries and the past and present officers and directors of said corporations, and to Eastern and its present officers and directors and to such of its past officers and directors as were nominees of Columbia Oil, good and sufficient releases (in form satisfactory to Columbia Oil) of all claims which Panhandle, its stockholders, the Mokan Receivers or Missouri-Kansas Pipe Line Company or any of them may have against said corporations or said officers or directors or any of them (other than claims under or pursuant to this agreement and/or the Eastern Plan);

(b) The Mokan Receivers or their respective successors shall, with the approval of said Court of Chancery, enter into an agreement with Columbia Oil, Columbia Gas & Electric Corporation, and Eastern for the cancellation of all rights and obligations of Columbia Oil, Columbia Gas & Electric Corporation, Eastern and Missouri-Kansas Pipe Line Company, and the Mokan Receivers for the purchase or sale of gas or the execution of gas contracts or other rights or obligations arising under a certain agreement, dated September 17, 1930, between Missouri-Kansas Pipe Line Company, The National City Company of New York, and Columbia Oil (including all modifications of said agreement); and

(c) Columbia Oil shall have received the written resignations of all directors of Eastern representing Panhandle, [fol. 128] conditioned upon the consummation of the Eastern Plan and effective when accepted by the Eastern Board of Directors.

4. Upon the date of consummation of the Eastern Plan, Columbia Oil agrees to purchase from Panhandle and Panhandle agrees to sell to Columbia Oil at 90% of their principal amount plus accrued and unpaid interest at the rate of 6% per annum from March 2, 1934, to the date of purchase, $500,000 principal amount of Modified Eastern Bonds de-

liverable to Panhandle under the Eastern Plan in exchange for stock of Eastern.

Columbia Oil further agrees, upon the date of the consummation of the Eastern Plan, to purchase from Panhandle and Panhandle agrees to sell to Columbia Oil the $800,000 principal amount of Non-Interest-Bearing Promissory Notes of Eastern deliverable to Panhandle under the Eastern Plan in exchange for stock of Eastern. Payment therefor shall be made by Columbia Oil by delivering to Panhandle five promissory notes of Columbia Oil, to the aggregate principal amount of $800,000, in such denominations as Panhandle may request, each such note to be payable in four equal instalments on March 1, 1935, September 1, 1935, March 1, 1936, and September 1, 1936, or earlier at the option of Columbia Oil, at the principal office of Chemical Bank & Trust Company, 165 Broadway, New York, N. Y., and not to bear interest unless default is made in the due and timely payment of any instalment thereof, in which case it is to bear interest at the rate of 6% per annum from the due date of such instalment; upon default in the payment of any instalment of such note, the holder is to have the right [fol. 129] to accelerate the maturity of the entire note; each such note to be secured by pledge of a like principal amount of the Non-Interest-Bearing Promissory Notes of Eastern so purchased. Columbia Oil further agrees that it will pay any of its said Promissory Notes which may be held by the Receivers of Missouri-Kansas Pipe Line Company, to an aggregate principal amount, however, not exceeding $200,000, on September 1, 1934, or on any date thereafter which shall be within sixty days after consummation of the Eastern Plan, at a discount of 25% of the principal amount thereof, provided that thirty days' prior notice of intention to present such notes for payment shall have been given by said Receivers to Columbia Oil at said office of Chemical Bank & Trust Company and that such notes shall be presented for payment on such date or within ten days thereafter.

Columbia Oil further agrees, after the consummation of the Eastern Plan, to cause Eastern to withdraw all claims theretofore filed by Eastern against the receivership estate of Missouri-Kansas Pipe Line Company and to execute good and sufficient releases of such claims.

5. Columbia Oil, Panhandle, and Eastern shall severally bear all expenses, including taxes and counsel fees, incurred

by them, respectively, in connection with carrying out this agreement and the consummation of the Eastern Plan.

6. All legal matters in connection with the carrying out of the Eastern Plan and this agreement shall be subject to the approval of the respective counsel for Columbia Oil and Panhandle.

7. Neither party shall be under any obligation hereunder unless both Panhandle and Columbia Oil shall have assented [fol. 130] or shall have become obligated hereunder to assent to the Eastern Plan in accordance with the terms hereof on or before June 30, 1934, or such later date as may be agreed upon by Panhandle and Columbia Oil.

In Witness Whereof, the parties hereto have caused this agreement to be executed as of the day and year first above written.

Columbia Oil & Gasoline Corporation, by E. Reynolds, Jr., Vice President.

Attest: H. H. Fell, Jr., Assistant Secretary. (Seal.)

Panhandle Corporation, By J. H. Hillman, Jr., President.

Attest: H. F. Reindel, Secretary. (Seal.)

[fol. 131] EXHIBIT "F" TO PETITION

Offer of Exchange, Dated June 19, 1935, of Columbia Oil & Gasoline Corporation, to Holders of Two-Year 6% Collateral Trust Notes of Panhandle Corporation

Revised Plan of Readjustment of Funded Debt and Capitalization, Dated June 19, 1935, of Panhandle Eastern Pipe Line Company

Columbia Oil & Gasoline Corporation,
61 Broadway, New York, June 19, 1935.

Offer of Exchange

To the Holders of the Two-Year 6% Collateral Trust Notes of Panhandle Corporation:

The above-named Notes of Panhandle Corporation (herein called the "Panhandle Notes"), which are outstand-

ing in the principal amount of $4,940,000, matured by their terms on March 15, 1933. We are advised that holders of approximately 98% of such Panhandle Notes consented to an extension of maturity to March 15, 1934. The principal of the Panhandle Notes is unpaid and interest thereon is [fol. 132] unpaid from September 15, 1933. The Panhandle Notes are guaranteed by Missouri-Kansas Pipe Line Company, which is in receivership.

There is attached hereto a balance sheet, as at May 15, 1935, of Panhandle Corporation, certified by D. G. Sisterson & Co., certified public accountants. This indicates that the Panhandle Notes constitute the only funded indebtedness of Panhandle Corporation and are secured by pledge of $4,945,500 principal amount of 6% Promissory Notes (subordinated), due October 2, 1950, and 114,900 shares of Common Stock of Panhandle Eastern Pipe Line Company, a Delaware corporation (herein called "Eastern"), and that such latter Notes and stock constitute substantially all of the assets of Panhandle Corporation. The balance sheet also indicates that no interest has been received by Panhandle Corporation on the Notes of Eastern held by it since September 2, 1933, and that Panhandle Corporation is without funds with which to pay its Notes.

Panhandle Eastern Pipe Line Company (Eastern).—The outstanding funded debt and capital stock of Eastern, all of which is owned by Panhandle Corporation and by Columbia Oil & Gasoline Corporation (herein called "Columbia Oil") are as follows:

	Owned by Panhandle	Owned by Columbia Oil
Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%, due October 1, 1950 (herein called "Existing Eastern Bonds")	None	$18,500,000
6% Promissory Notes (subordinated), due October 2, 1950 (herein called "Eastern Notes")	$4,945,500	$4,945,500
Common Stock.....shares	114,900	114,900

[fol. 133] A consolidated balance sheet, as at December 31, 1934, of Eastern and its subsidiaries, and consolidated income accounts and summary of consolidated surplus accounts of Eastern and its subsidiaries for the years ended December 31, 1932, December 31, 1933, and December 31, 1934, certified by Messrs. Arthur Andersen & Co., certified public accountants, are attached as Schedule A to the Revised Plan of Readjustment of Funded Debt and Capitalization of Eastern attached hereto.

Plan of Readjustment of Eastern.—In March 1934 the Board of Directors of Eastern adopted a Plan of Readjustment of Funded Debt and Capitalization, dated March 12, 1934, designed to reduce the fixed charges of Eastern and avoid a receivership of Eastern and a foreclosure of the mortgage securing the Existing Eastern Bonds, and Panhandle Corporation made an offer of exchange dated March 12, 1934 to its Noteholders. Such plan and offer were not consummated because some of the conditions precedent to the plan could not be met. The necessity for the readjustment of Eastern, however, still exists and accordingly a Revised Plan of Readjustment of Funded Debt and Capitalization of Eastern, dated June 19, 1935 (herein called the "Eastern Plan"), has been adopted by its Board of Directors. A copy thereof is attached hereto, and reference is made thereto for a complete statement of its terms.

The treatment accorded by the Eastern Plan to the outstanding securities of Eastern may be summarized as follows:

[fol. 134]

Existing Securities	Securities to be Received under Plan
$18,500,000[1] Existing Eastern Bonds held by Columbia Oil.	$18,500,000[1] Modified Eastern Bonds.
$4,945,500 Eastern Notes, and 114,900 shares Eastern Common Stock held by Columbia Oil.	$800,000 Promissory Notes of Eastern, due September 1, 1937, and, one-half of the Eastern Capital Stock of each class.
$4,945,500 Eastern Notes, and 114,900 shares Eastern Common Stock held by Panhandle Corporation.	$800,000 Promissory Notes of Eastern, due September 1, 1937, and, one-half of the Eastern Capital Stock of each class.

[1] Subject to reduction prior to consummation of the Eastern Plan by operation of the sinking fund.

The agreement of Columbia Oil to assent to the Eastern Plan is conditioned among other things upon the acquisition by Columbia Oil of at least 97% (or such lesser percentage as Columbia Oil may determine) of the outstanding Panhandle Notes and of at least 750 of the 1,000 shares of the outstanding capital stock of Panhandle Corporation. Columbia Oil has made an offer to the holders of said stock for the acquisition thereof if and when the Eastern Plan is consummated.

Offer of Exchange

Columbia Oil hereby offers, subject to the conditions set forth below, to the holders of Panhandle Notes, the right

to exchange such Panhandle Notes for Modified Eastern Bonds at the rate of $750 principal amount of Modified Eastern Bonds for each $1,000 principal amount of Panhandle Notes, with the interest adjustment provided for below. For a statement of the terms of such Modified Eastern Bonds and a description of the security therefor reference is made to the Eastern Plan attached hereto and to Schedule B thereof.

[fol. 135] Payment of Interest.—Upon acceptance of this Offer by the holders of at least 97% (or such lesser percentage as Columbia Oil may approve) of the outstanding Panhandle Notes, and without awaiting the consummation of the Eastern Plan and the exchange contemplated by this Offer, Columbia Oil will pay to the holders who accept this Offer twelve (12) months' interest on their Panhandle Notes, against an assignment to Columbia Oil of the Panhandle Noteholders' claims to such interest.

Upon the consummation of the Offer of Exchange and Eastern Plan, Columbia Oil is to pay to the holders of Panhandle Notes who accept this Offer the remaining six (6) months' interest accrued to March 15, 1935, on their Panhandle Notes, together with any interest accured after March 2, 1935, and collected by Columbia Oil on the Modified Eastern Bonds to be delivered in exchange therefor, so that in effect such holders will receive interest upon their Panhandle Notes to March 15, 1935, and upon the Modified Eastern Bonds delivered in exchange therefor from March 2, 1935.

Conditions to Carrying Out of the Offer.—The carrying out of the exchange of securities contemplated by this Offer is conditioned upon the following:

(a) The acceptance of the Offer by the holders of at least 97% (or such lesser percentage as Columbia Oil may determine) of the outstanding Panhandle Notes within such period of time as Columbia Oil may determine;

(b) The termination of an anti-trust suit brought by the United States against Columbia Oil, Columbia Gas & Elec-
[fol. 136] tric Corporation, and certain individual defendants in the United States District Court for the District of Delaware, in such manner that Columbia Oil shall not be required to divest itself of its holdings of Eastern securities; in such suit it is alleged among other things that the acquisition by Columbia Oil of the securities of Eastern

now held by it was in violation of the Anti-Trust Laws of the United States and it is prayed among other things that Columbia Oil be directed to divest itself of the ownership of these securities; and

(c) The consummation of the Eastern Plan.

Directors of Eastern.—Four of the present eight directors of Eastern were nominated by Columbia Oil, namely Burt R. Bay (President of Eastern), James L. Harrop (Vice President and Director of Columbia Oil), Charles A. Munroe (President, Director, and Voting Trustee of Columbia Oil), and William P. Philips (Director and Voting Trustee of Columbia Oil). The other four directors were nominated by Panhandle Corporation, namely, Joseph A. Bower (Executive Vice President and Director of Chemical Bank & Trust Company), J. H. Hillman, Jr. (President and Director of Pennsylvania Industries, Inc.), Dean Mathey (Dillon, Read & Co.), and H. F. Reindel (Cotton, Franklin, Wright & Gordon). In the event of the consummation of the Eastern Plan, it is contemplated that the latter four directors will resign. Columbia Oil is the owner of certain of the Eastern securities. Chemical Bank & Trust Company and Dillon, Read & Co. are owners of Panhandle Notes. J. H. Hillman, Jr., is an officer and/or Director and/or stockholder of various corporations which are [fol. 137] owners of Panhandle Notes and/or Panhandle stock. Cotton, Franklin, Wright & Gordon are counsel for Panhandle Corporation.

Method of Acceptance by Holders of Panhandle Notes.—The holders of approximately 98% of the outstanding Panhandle Notes have heretofore accepted the offer of Panhandle Corporation, dated March 12, 1934, and have deposited their Panhandle Notes with Chemical Bank & Trust Company. Such holders who desire to accept this Offer should send to Chemical Bank & Trust Company, Corporate Trust Department, 165 Broadway, New York, N. Y., the enclosed letter of Transmittal and Power of Attorney properly executed, with signature guaranteed as therein indicated, authorizing Chemical Bank & Trust Company to accept this Offer and, upon consummation of this Offer and the Eastern Plan, to deliver the Panhandle Notes now held by Chemical Bank & Trust Company for such holder to Columbia Oil against delivery to Chemical Bank & Trust Company for account of such Note holders of the Modified

Eastern Bonds and interest called for by the Offer. The holders of Panhandle Notes who desire to accept the above Offer and who have not accepted the offer of Panhandle Corporation, dated March 12, 1934, should deliver their Notes to Chemical Bank & Trust Company, with the March 15, 1934 coupons attached, accompanied by the enclosed Letter of Transmittal and Power of Attorney properly executed, with signature guaranteed as above. Such Letters of Transmittal and Power of Attorney also authorize and direct Chemical Bank & Trust Company, upon payment by [fol. 138] Columbia Oil of the amount of the twelve (12) months' interest to September 15, 1934, upon the Panhandle Notes thus surrendered, to detach and deliver to Columbia Oil the interest coupons thereto appertaining maturing March 15, 1934, and to assign to Columbia Oil the six (6) months' interest accruing on such Notes from March 15, 1934, to September 15, 1934, and to stamp such Notes with an appropriate notation of such assignment and to distribute the monies received from Columbia Oil to the Panhandle Noteholders entitled thereto.

All transfer taxes payable with respect to the exchange contemplated by this Offer are to be paid by Columbia Oil.

Should this Offer and the Eastern Plan not be carried out in accordance with their respective terms on or before December 31, 1936, the depositors of Panhandle Notes will be entitled to the return of the deposited Panhandle Notes without expense to them.

The above Offer, unless extended, will expire at the close of business on July 20, 1935.

Columbia Oil & Gasoline Corporation, by Charles A. Munroe, President.

[fol. 139] PANHANDLE CORPORATION BALANCE SHEET AT MAY 15, 1935

ASSETS

Securities and Cash—Pledged with Chemical Bank & Trust Company, Trustee, to Secure Payment of Corporation's Two-Year 6% Collateral Trust Notes:		
Cash on Deposit with Trustee		$4,886.81
Securities of Panhandle Eastern Pipe Line Company:		
6% Promissory Notes, due October 2, 1950 (at Cost) (Interest from September 2, 1933 in default)	$4,945,500.00	
Accrued Interest (September 2, 1933 to May 15, (1935)	505,256.25	
		5,450,756.25
114,900 shares Capital Stock (Voting Trust Certificates)		10,244,209.15

Of the above stock, 5,000 shares were received in exchange for 1,000 shares of Panhandle Corporation, and were valued by the Directors at the time of acquisition at the value shown on October 31, 1930, on the books of Panhandle Eastern Pipe Line Company. This value was subsequently written down by order of the Directors to reflect a corresponding write-down of assets of Panhandle Eastern Pipe Line Company made by that corporation on its books in March 1932, 109,900 shares were acquired for cash at $5.00 per share.

Total Assets Pledged with Trustee		15,699,852.21
Cash		160.28
		15,700,012.49

LIABILITIES

Two-Year 6% Collateral Trust Notes, Due March 15, 1933:		
Principal Amount	$4,940,000.00	
Accrued Interest (September 15, 1933 to May 15, 1935)	494,000.00	
		5,434,000.00

Consent was requested from the holders thereof for the extension of these Notes for one year to March 15, 1934. On March 12, 1934, an Offer of Exchange was made to the holders. Holders of approximately 98% of these Notes assented to the extension to March 15, 1934, and approxi-

[fol. 140]

mately 98% of these Notes were deposited under the Offer of Exchange of Panhandle Corporation, dated March 12, 1934.

We are informed that, due to a decision of the Court of Chancery of the State of Delaware, the Offer of Exchange, dated March 12, 1934, has been abandoned, and a new Offer of Exchange will presently be submitted to the Noteholders by Columbia Oil & Gasoline Corporation.

Other Liabilities:		
Notes Payable:		
Secured by deposit of 700 shares Preferred Stock and 350 shares Common Stock of Kentucky Natural Gas Corporation borrowed from Missouri-Kansas Pipe Line Co	$23,530.00	
Unsecured Demand Notes	42,033.20	
	65,563.20	
Accrued Interest on Notes Payable	9,116.09	
	74,679.29	
Accounts Payable	76,231.22	
		$150,910.51
Missouri-Kansas Pipe Line Company:		
Securities Borrowed—Pledged as collateral with Notes Payable (as above)—700 shares Preferred Stock and 350 shares Common Stock of Kentucky Natural Gas Corporation		—0—
Capital Stock:		
Authorized and Outstanding: 1,000 shares of a par value of $10.00 per share	$10,000.00	

Capital Surplus:		
Through valuation of Panhandle Eastern Pipe Line Company Stock	9,684,709.15	
Paid-in Capital	637.879.95	
	10,322,589.10	
	10,332,589.10	
Operating Deficit	217,487.12	
		10,115,101.98
		15,700,012.49

We have audited the accounts and records of Panhandle Corporation, a Maryland corporation, and certify that, in our opinion, the above Balance Sheet correctly sets forth the financial condition of the Company at May 15, 1935.

D. G. SISTERSON & COMPANY,
Certified Public Accountants.

Pittsburgh, Pa.
May 31, 1935.

[fol. 141] Panhandle Eastern Pipe Line Company—Revised Plan of Readjustment of Funded Debt and Capitalization

Dated, June 19, 1935.

The Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company (herein called "Eastern") dated March 12, 1934, was not consummated because certain conditions precedent to such plan could not be met.

The necessity for the readjustment of Eastern, set forth in the plan of March 12, 1934, still exists and consequently Eastern has revised such plan and offers this revised plan (herein called the "Plan") to its security holders.

I

Condition of the Company

The funded debt and capitalization of Eastern are as follows:

Twenty-Year Sinking-Fund Mortgage Gold Bonds, Series A, 6%, due October 1, 1950 (herein called "Existing Eastern Bonds")	$18,500,000
6% Promissory Notes, due October 2, 1950 (herein called "Eastern Notes")	$9,891,000
Common Stock, without par value	shares 229,800

There are attached hereto, as Schedule A, a consolidated balance sheet of Eastern and its subsidiaries, as at December 31, 1934, and consolidated income accounts and summary of consolidated surplus accounts of Eastern and its subsidiaries for the years ended December 31, 1932, Decem-

ber 31, 1933, and December 31, 1934, certified by Messrs. Arthur Andersen & Co., certified public accountants.

Interest payments upon the Existing Eastern Bonds have been made as such payments became due. The semiannual [fol. 142] sinking fund upon the Existing Eastern Bonds payable on February 18 and August 21 of each year and amounting to $315,000 has been paid to and including the instalment due February 18, 1935, and an aggregate of $1,500,000 of Existing Eastern Bonds have been retired through operation of such sinking fund, $900,000 principal amount having been retired since December 31, 1934, at the redemption price of 105% and interest.

The semi-annual interest instalment upon the Eastern Notes due on March 2, 1934, and subsequent instalments have not been paid.

II

Capitalization of Eastern Upon Consummation of the Plan

The funded debt and capitalization of Eastern, as at June 19, 1935, but adjusted to give effect to the consummation of the Plan, are as follows:

Twenty-Year Mortgage Bonds, Series A, 6%, due October 1, 1950 (herein called "modified Eastern Bonds")	[1]$18,500,000
Promissory Notes, due September 1, 1937	1,600,000
Capital Stock	[2]

[1] Subject to reduction prior to the consummation of the Plan by operation of the Sinking Fund.

[2] Such number of shares as may be determined by Eastern, which shares may be entirely of one class or may be divided into common stock and preferred stock with such relative rights as may be determined by Eastern.

The Modified Eastern Bonds above referred to are to be the Existing Eastern Bonds with certain terms thereof and of the Indenture and Supplemental Indenture under which they are issued modified by agreement with the present holders thereof. A description of the terms of the Modified [fol. 143] Eastern Bonds and of the security therefor is set forth in Schedule B.

The Promissory Notes due September 1, 1937, above referred to are to be non-interest bearing until September 1, 1936, and are to bear interest at the rate of 5% per annum for the year ended September 1, 1937.

III

Basis of Readjustment

1. The holders of Existing Eastern Bonds will be entitled, in lieu of their present holdings of Existing Eastern Bonds, to receive and/or retain, upon consummation of the Plan, a like principal amount of Modified Eastern Bonds.

2. The holders of $9,891,000 principal amount of Eastern Notes and of 229,800 shares of Common Stock of Eastern will be entitled, in lieu of their present holdings of Eastern Notes (including all claims for interest accrued thereon) and Common Stock, to receive and/or retain, in proportion to their respective holdings of such Eastern Notes and Common Stock, upon consummation of the Plan, $1,600,000 principal amount of Promissory Notes of Eastern, due September 1, 1937, and the entire Capital Stock of Eastern of each class to be outstanding upon consummation of the Plan.

IV

Operation of Sinking Fund Pending Consummation of Plan

The first semi-annual sinking-fund payment on the Modified Eastern Bonds, as described in Schedule B, is to be payable on the first semi-annual sinking-fund payment date after the consummation of the Plan, and in the interim the [fol. 144] sinking fund upon the Existing Eastern Bonds is to operate. Such sinking fund on the Existing Eastern Bonds at present amounts to $630,000 per year and operates in effect to retire Bonds at their redemption price of 105 and accrued interest. Eastern reserves the right, by agreement with the holder of all of the outstanding Existing Eastern Bonds, to suspend the operation of any portion or all of such sinking fund for the Existing Eastern Bonds which would become payable prior to the consummation of the Plan.

V

Conditions of Consummation of the Plan

Consummation of the Plan shall be conditioned upon the assent by the holders of all the outstanding securities of Eastern to the Plan on or before December 31, 1936.

No commission or other remuneration is to be paid to any person, firm, or corporation as compensation for soliciting assents to this Plan.

Panhandle Eastern Pipe Line Company, by B. R. Bay, President.

SCHEDULE A.—PANHANDLE EASTERN PIPE LINE COMPANY AND SUBSIDIARY COMPANIES

CONSOLIDATED BALANCE SHEET—DECEMBER 31, 1934

ASSETS

Plant, Property, Contracts, Leaseholds, Etc.:		
Texas to Indiana pipe line system—at cost	$39,707,138.74	
Other wells, leaseholds, pipe lines, compressors, etc.—at cost	2,855,618.00	
Gas purchase and sales contracts—at values assigned by the Board of Directors	3,053,391.53	
		$45,616,148.27
[fol.145]		
Investment in Capital Stock of Subsidiary Companies Not Consolidated:		
Representing 51% ownership, stated at cost (underlying book value $48,551.24 after deducting abandoned property)		$180,239.68
Bond Discount and Expense in Process of Amortization		1,601,091.34
Prepaid Accounts and Deferred Charges:		
Property and leaseholds abandoned	$416,398.83	
Prepaid lease rentals and insurance	37,215.73	
Other prepaid and unadjusted items	86,892.28	
		540,506.84
Special Deposits:		
Sinking fund deposits held by trustee	[1]630,000.00	
Other deposits	689.07	
		[1]630,689.07
Current Assets:		
Cash in banks and on hand	501,473.86	
Demand note, noninterest bearing, of Indiana Gas Transmission Corporation	150,000.00	
Accounts and notes receivable	344,222.98	
Materials and supplies, including construction materials, stated at average cost; quantities and condition as reported by management based on periodic physical inventories	264,929.92	
		1,260,626.76
		49,829,301.96

LIABILITIES

Capital Stock and Surplus:		
Capital Stock:		
Authorized 230,000 shares without par value; issued and outstanding 229,800 shares, at declared value	$1,199,000.00	
Capital surplus—Paid in	19,285,867.47	
	20,484,867.47	
Deduct—Deficit	3,354,772.75	
		$17,130,094.72

[fol.146]

Funded Debt:		
Panhandle Eastern Pipe Line Company:		
Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%, due October 1, 1950:		
Total issued	$20,000,000.00	
Less—Bonds retired and canceled	[1] 600,000.00	
	[1] 19,400,000.00	
(Sinking fund payments due during 1935 aggregate $630,000.00.)		
6% Promissory Notes, due October 2, 1950	9,891,000.00	
Panhandle Illinois Pipe Line Company:		
Mortgage notes, payable out of proceeds of gas sales	90,594.75	
		$29,381,594.75
Deferred Liabilities:		
Customers' deposits	3,125.00	
Other deferred liabilities	19,528.26	
		22,653.26
Current Liabilities (Exclusive of sinking fund payments noted above):		
Accounts payable	56,277.12	
Due to affiliated companies	39,000.00	
Interest due on notes	593,460.00	
Accrued interest	487,239.10	
Accrued taxes	159,487.83	
		1,335,464.05
Reserves:		
Depreciation and amortization	1,915,870.59	
Uncollectible accounts	12,220.09	
Other reserves	31,404.50	
		1,959,495.18
		49,829,301.96

[1] Company Notation: The sinking-fund deposit of $630,000 and a sinking-fund payment of $315,000 due February 18, 1935, have been applied since December 31, 1934, to the retirement of $900,000 principal amount of Twenty-Year Sinking Fund Mortgage Gold Bonds, Series A, 6%, due October 1, 1950.

[fol.147] CONSOLIDATED INCOME ACCOUNTS FOR THE YEARS ENDED DECEMBER 31, 1934, 1933, AND 1932

	Year ended December 31—		
	1934	1933	1932
Gross Earnings:			
Gas Sales	$2,844,934.63	$2,416,397.62	$1,788,359.33
Other Revenues	203,583.22	168,999.17	124,566.82
Total Gross Earnings	3,048,517.85	2,585,396.79	1,912,926.15
Operating Expenses and Taxes:			
Operation	920,668.14	888,273.35	910,304.38
Maintenance	88,901.30	110,831.40	155,070.93
Taxes	270,204.00	262,375.23	219,459.98
Total Operating Expenses and Taxes	1,279,773.44	1,261,479.98	1,284,835.29

	Year ended December 31—		
	1934	1933	1932
Net Operating Revenues before Provision for Depreciation and Amortization of Gas Rights and Leases...	1,768,744.41	1,323,916.81	628,090.86
Interest Deductions:			
Interest on Funded Debt:			
Twenty - Year Sinking Fund Mortgage Gold Bonds, Series A, 6%...	1,164,000.00	1,177,300.00	1,200,000.00
6% Promissory Notes...	593,460.00	593,460.00	559,473.00
Funded Debt of Subsidiary Companies.....	2,698.18	.....	.....
Amortization of Debt Discount and Expense.....	119,741.62	102,702.87	104,698.59
Other general interest—Net.	*3,788.52*	*7,142.96*	*15,884.63*
Interest Charged to Construction [1].....	.....	.....	*456,448.96*
Total Interest Deductions	1,876,111.28	1,866,319.91	1,392,043.00
Net Loss before Provision for Depreciation and Amortization of Gas Rights and Leases.	*107,366.87*	*542,403.10*	*763,952.14*
Provision for Depreciation and Amortization of Gas Rights and Leases, as determined by the Companies [2].....	764,639.89	759,713.24	582,574.44
Net Loss.....	*872,006.76*	*1,302,116.34*	*1,346,526.58*
Net Loss of Main Line Operations for Three Months ended March 31, 1932, Charged to Construction [1]...	.....	.....	4,947.16
Net Loss carried to Surplus [2]..	*872,006.76*	*1,302,116.34*	*1,341,579.39*

NOTE—Italics represent red figures.

[1] The period from the inception of the Company to March 31, 1932, has been treated by the Company as the period of construction of the pipe line system and interest, taxes and amortization of debt discount and expenses during this period were capitalized. The total net income in this period (including the three months ended March 31, 1932, for which a loss of $4,947.19 was sustained) was $48,604.69, after deducting $264,072.64 provision for depreciation and amortization of gas rights and leases, but with no deduction for interest, taxes or amortization of debt discount and expenses. Such net income was credited to the cost of construction of the pipe line.

[2] The company is providing a reserve for the amortization of $642,286.30 of gas purchase and sales contracts over a period of twenty years. No provision has been made for amortization of the remaining gas purchase and sales contracts, which are carried at $2,411,105.23. In the Federal income-tax returns deductions for depreciation and amortization are considerably larger than the provisions recorded on the books and shown above.

[fol. 148]

Summary of Consolidated Surplus Accounts for Years Ended December 31, 1934, 1933, and 1932

	Year ended December 31—		
	1934	1933	1932
Earned surplus (*deficit*) balance beginning of year.....	*$2,492,577.54*	*$1,105,754.84*	$234,049.13
Net loss for the year.....	*872,006.76*	*1,302,116.34*	*1,341,579.93*
	3,364,584.30	*2,407,871.18*	*1,107,530.26*

	Year ended December 31—		
	1934	1933	1932
Surplus direct credits or *charges:*			
Unamortized debt discount and expense on bonds retired	.....	*54,706.36*	.....
Transfer of balance in reserve for contingencies	36,002.66	.....	.....
Premium on bonds retired	.....	*30,000.00*	.....
Revaluation of investment in Macon Gas and Electric Light Company stock	*23,487.80*	.....	.....
Miscellaneous (net)	*2,763.31*	.....	1,775.42
Earned surplus (*deficit*) balance end of year [1] [2]	*3,354,772.75*	*2,492,577.54*	*1,105,754.84*
Capital surplus balance end of year	19,285,867.47	19,294,624.55	19,285,867.47

To the Board of Directors, Panhandle Eastern Pipe Line Company:

We have made an examination of the consolidated balance sheet of the Panhandle Eastern Pipe Line Company and subsidiary companies as at December 31, 1934, and of the statement of consolidated income and surplus for the three years ended that date. In connection therewith, we examined or tested accounting records of the companies and other supporting evidence and obtained information and explanations from officers and employees of the companies; we also made a general review of the accounting methods and of the operating and income accounts for the three years, but we did not make a detailed audit of the transactions.

The company has amortized debt discount and expense on a straight-line basis, which method does not give ex- [fol. 149] pression to the retirement of bonds through the operations of the sinking fund. Unamortized debt discount and expense of $54,706.36 applicable to bonds retired through the operations of the sinking fund during 1933, together with premium paid of $30,000.00, has been charged direct to surplus by the company.

Subject to the comments in the preceding paragraph, and to the adequacy of the annual provisions and reserve for depreciation and amortization of gas rights and leases, in our opinion, based upon the examination referred to above, the foregoing consolidated balance sheet and related statement of income and surplus fairly present, in accordance with accepted principles of accounting consistently maintained by the companies for the three years under review, the financial position of the companies at December 31,

1934, and the results of their operations for the three years ended that date.

Arthur Andersen & Co., Certified Public Accountants.

Kansas City Mo., June 19, 1935.

Schedule B.—Provisions of Modified Eastern Bonds Upon Consummation of Eastern Plan

The Modified Eastern Bonds are to be the Existing Eastern Bonds presently outstanding, modified so that the terms thereof will conform to the terms as herein set forth. The Existing Eastern Bonds are outstanding as Bonds of Series A under the Mortgage Trust Indenture, dated as of October 1, 1930 (as supplemented and amended by a Supplemental Indenture, dated as of March 27, 1931), of Panhandle Eastern Pipe Line Company to City Bank Farmers [fol. 150] Trust Company (herein referred to as the Trustee) and James M. Kemper (successor to Walter Scott McLucas), as Trustees. Such Indenture is to be modified by the execution of a Second Supplemental Indenture so as to conform to the terms and provisions herein set forth with such other changes in the Indenture as may be approved by Columbia Oil & Gasoline Corporation and Panhandle Corporation (the Indenture, as modified by the Supplemental Indenture and as to be modified by the Second Supplemental Indenture being herein referred to as the "Amended Indenture"). The Modified Eastern Bonds may be Bonds whose text conforms to the modifications herein provided for or Existing Eastern Bonds stamped with a notation of such modifications and of the execution of such Second Supplemental Indenture. Subject to the provisions hereof and of the foregoing Plan, the Modified Eastern Bonds and Amended Indenture shall be in such form and have such terms as may be approved by Columbia Oil & Gasoline Corporation and Panhandle Corporation.

The following is a summary of the terms of the Modified Eastern Bonds and a description of the security therefor:

1. Date and Form.—The Modified Eastern Bonds shall be known as Twenty-Year Mortgage Bonds, Series A, 6%. They shall be dated as of October 1, 1930, and shall mature October 1, 1950; they shall be coupon Bonds, registerable as to principal, in denominations of $1,000, $500, and $250

or any multiple of $1,000. Bonds of any denomination other than $1,000 shall be exchangeable for an equal aggregate [fol. 151] principal amount of Bonds of the denomination of $1,000.

2. Interest and Sinking Fund.—The Modified Eastern Bonds shall bear interest at the rate of 6% per annum, payable semi-annually on April 1 and October 1 of each year.

The Modified Eastern Bonds are to be entitled to an annual Sinking Fund, payable in two equal instalments (as nearly as may be) on or before February 18 and August 21 of each year, which annual Sinking Fund shall amount to—

(a) one-half of such portion of the consolidated earnings of Eastern and its subsidiaries for the preceding calendar year, after all charges other than depreciation and depletion as are actually appropriated for depreciation and depletion by the Board of Directors, plus

(b) the amount of consolidated net earnings of Eastern and its subsidiaries for such preceding year, after all charges including depreciation and depletion; provided that the compulsory Sinking Fund in any year shall not exceed an amount sufficient to redeem $600,000 principal amount of Modified Eastern Bonds at the then prevailing redemption price. In the event that any Modified Eastern Bonds are issued under the Amended Indenture in addition to the $18,500,000 thereof to be outstanding upon consummation of the Plan, such maximum compulsory Sinking Fund shall thereafter be increased in the proportion borne by the principal amount of such additional Bonds to $20,000,000 (being the principal amount of Existing Eastern Bonds originally outstanding). The first semi-annual Sinking Fund payment on the Modified Eastern Bonds shall be [fol. 152] payable on the first semi-annual Sinking Fund payment date after the consummation of the Plan and shall amount to one-half of the annual Sinking Fund which would be payable under the above provisions on the basis of the previous year's operations.

At the option of Eastern, the Modified Eastern Bonds and the Amended Indenture may provide, in lieu of the Sinking Fund above provided for, for an annual Sinking Fund in an amount sufficient to redeem $600,000 principal amount of Modified Eastern Bonds at the then prevailing redemption price, payable one-half on or before February 18 and one-half on or before August 21 in each year, and subject

to increase upon issue of additional Modified Eastern Bonds in the proportion above indicated.

The amount paid into the Sinking Fund shall be applied by the Trustee to the purchase of Bonds as follows: The Trustee shall advertise for tenders by publishing a call for such tenders once a week for four successive weeks in a daily newspaper, published and of general circulation in the Borough of Manhattan, City of New York, the first publication to be not more than five days after the date of payment of the Sinking Fund, and by mailing a copy of such call to Bondholders who have filed their address with the Trustee for such purpose. All tenders shall be opened by the Trustee on the date announced in such call which shall be not less than thirty and not more than thirty-five days after the first publication of such call, and the Trustee shall accept the lowest tenders thus made, to the extent necessary to exhaust the Sinking Fund, provided that the [fol. 153] Trustee shall not purchase Bonds at a price in excess of the then prevailing redemption price. Any moneys in the Sinking Fund not so expended shall be applied by the Trustee to the redemption of Bonds at the then prevailing redemption price.

Eastern may increase any Sinking Fund payment over the amount above required to be paid or may make payments into the Sinking Fund, in addition to those above required to be made, on other than Sinking Fund payment dates, such moneys to be applied by the Trustee to the retirement of Bonds, after advertisement for tenders, as above provided; any such additional payment into the Sinking Fund shall be credited against Eastern's obligation with respect to succeeding Sinking Fund instalments. Eastern shall not, however, have the right to tender Bonds to the Trustee for sale to the Sinking Fund.

3. Place of Payment. Tax Provisions.—The Modified Eastern Bonds shall be payable both as to principal and interest at the principal office of the Trustee in New York City. Interest on the Modified Eastern Bonds shall be payable without deduction for any Federal income tax not in excess of two per cent thereof which Eastern or the Trustee may be required or permitted to pay thereon or to retain therefrom under any present or future law of the United States. Eastern is to reimburse the owner of any Modified Eastern Bonds residing in Pennsylvania for the Pennsylvania Four Mills Tax

assessed and paid with respect to such Bonds and is to reimburse any such owner residing in Wisconsin the amount of any Wisconsin income tax, not in excess of 6% of the [fol. 154] interest received on such Bonds in any year, assessed and paid with respect to such interest.

4. Redemption of Bonds.—The Modified Eastern Bonds shall be redeemable in whole or in part, at the option of Eastern or for the Sinking Fund, at any time upon thirty days' prior published notice, on or before October 1, 1945, at 105; thereafter and on or before October 1, 1946, at 104; thereafter and on or before October 1, 1947, at 103; thereafter and on or before October 1, 1948; at 102; thereafter and on or before October 1, 1949, at 101; and thereafter until maturity at 100; plus accrued interest at the rate of 6% per annum in each case.

5. Security.—The Modified Eastern Bonds will be secured by a lien (through direct mortgage or by the pledge of demand mortgages, indebtedness and capital stock of subsidiaries, as indicated below) upon the Panhandle Eastern Pipe Line System owned by Eastern directly or through subsidiaries and extending from the Panhandle District of Texas through the States of Texas, Oklahoma, Kansas, Missouri, and Illinois to the Illinois-Indiana State line. The Pipe Line System includes the main line (owned entirely by Eastern except for the portion crossing the State of Illinois, which is owned by Panhandle Illinois Pipe Line Company, a wholly owned subsidiary), ranging from twenty to twenty-four inches in diameter and having a length of more than 850 miles; together with lateral transmission lines (owned by Eastern and Panhandle Illinois Pipe Line Company) extending to the communities served from the main pipe line, field, and gathering lines (owned by Eastern) in the producing areas in Texas, Oklahoma, and south-[fol. 155] western Kansas, the natural-gas production from approximately 177,393 acres (controlled through leases or otherwise by Texas-Interstate Pipe Line Company, a wholly owned subsidiary of Eastern), of which about 12,409 acres are operated, and a one-half interest in the natural-gas production from approximately 28,895 acres (similarly controlled), of which about 6,159 acres are operated.

The Pipe Line System is to be subject to the lien of the Amended Indenture by a direct mortgage on that part of the System owned directly by Eastern and by the pledge

of the entire capital stock and indebtedness (except indebtedness secured by lien on newly acquired property existing or created at the time of acquisition thereof and except current liabilities) of Panhandle Illinois Pipe Line Company and Texas-Interstate Pipe Line Company. Indebtedness of these two subsidiaries in excess of $500,000 must be represented, so far as legally permissible, by mortgage bonds which by their terms are to be payable on demand and are to bear interest, on a cumulative basis, only to the extent earned. The covenant of Eastern, now contained in the Indenture, to mortgage certain after-acquired property is to be modified so as to exclude after-acquired tangible personal property and the covenant of Eastern to record the Indenture as a chattel mortgage is to be omitted from the Amended Indenture.

The total cost of construction completed to April 1, 1932, of the Pipe Line System which is to be subject to the lien of the Amended Indenture, as certified by Messrs. Brokaw, Dixon, Garner & McKee, Geologists and Petroleum Engineers, and by Messrs. Arthur Andersen & Co., certified public [fol. 156] accountants, by certificates dated June 1, 1932, was $39,099,745.31.

Eastern and certain of its subsidiaries own production, transmission, and distribution properties in the vicinity of Kansas City, known as the "local area properties", and certain distribution plants adjacent to the main pipe line, which properties are not now subject to the lien of the Indenture. These properties are not to be subject to the lien of the Amended Indenture.

Articles Seventh and Eighth of the Indenture are to be omitted from the Amended Indenture and the covenants of Eastern therein contained are to be waived. Under the terms of these Articles funds for the construction of the present pipe line were deposited with the Trustee and Eastern covenanted that if the pipe line should cost less than $40,000,000 it would either invest the difference in property subject to the lien of the Indenture or retire Series A Bonds to such an extent that the cost of the pipe line should be at least twice the principal amount of Series A Bonds outstanding.

6. Issue of Additional Bonds.—Additional Bonds, over and above the $18,500,000 principal amount of Modified Eastern Bonds (Series A) presently to be outstanding, may

be issued under the Amended Indenture in one or more series, at such interest rates, with such redemption terms and with such other provisions (within the limitations to be set forth in the Amended Indenture) as the Board of Directors may from time to time determine. The Amended Indenture will provide, in substance, that subject to the [fol. 157] limitations to be contained therein, such additional Bonds may be issued for the following purposes, among others: (1) for the refunding, acquisition, or retirement of Bonds of any series or of underlying mortgage obligations of Eastern or of refundable prior charges on assets of any pledged company (i. e., a company at least 95% of whose equity stock is owned by Eastern and pledged under the Amended Indenture), par for par; (2) in principal amounts not exceeding 50% of the cost or fair value of additional fixed assets acquired or constructed by Eastern, or by any pledged company, or of equity stock of any pledged company acquired by Eastern, subsequently to December 31, 1933, with certain limitations (to be set forth in the Amended Indenture) upon the issue of Bonds against the acquisition or construction of additional fixed assets subject to existing liens or against the acquisition of equity stock subject to prior charges on assets; or (3) to provide cash to be deposited with the Trustee to be withdrawn for one or more of the foregoing purposes; provided, however, that no additional Bonds may be issued for any purposes except those set forth in (1) above unless consolidated net earnings of Eastern and its subsidiaries, after depreciation and depletion, available for interest (as to be defined in the Amended Indenture), during twelve consecutive months ended not more than 90 days prior to the date of issuance of such additional Bonds shall have been not less than one and three-fourths times the consolidated annual charges on consolidated funded indebtedness (as to be defined in the Amended Indenture) to be outstanding immediately after [fol. 158] the issuance of such additional Bonds.

7. Release of Mortgaged or Pledged Property.—The Amended Indenture is to provide for the release of mortgaged property or pledged securities or indebtedness, when no longer needed in the business of Eastern, only (except in the case of surrender of leases of gas acreage or releases of property not exceeding $5,000 in value in any one year) if such property or securities or indebtedness have been sold or exchanged for not less than their fair value, as deter-

mined by the Board of Directors of Eastern or taken by right of eminent domain; the proceeds of such sale or exchange, if in the form of property or securities, must be subjected to the lien of the Amended Indenture, or, if in the form of cash, must be deposited with the Trustee. Cash so deposited may be withdrawn (1) to reimburse Eastern or any pledged company for 100% of the cost or fair value of additional fixed assets acquired or constructed by it subsequent to December 31, 1933; (2) to reimburse Eastern for the cost or fair value of equity stock of any pledged company acquired by it subsequent to December 31, 1933; (3) for the retirement of Bonds of any series by purchase (in the case of Series A Bonds, through the Trustee which is to call for tenders as in the case of the Sinking Fund) or by redemption; or (4) for the acquisition or retirement of underlying mortgage obligations of Eastern or of refundable prior charges on assets of any pledged company. If more than one series of Bonds is outstanding, any proceeds of released property applied to the retirement of Bonds [fol. 159] shall be divided among the various series in proportion to the principal amount of Bonds of each series outstanding. Proceeds of insurance aggregating $25,000 or more must be deposited with the Trustee and may be withdrawn for similar purposes or to reimburse Eastern for the cost of repairs or replacements.

[fol. 160] IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANTS COLUMBIA GAS & ELECTRIC CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, THOMAS R. WEYMOUTH, THOMAS B. GREGORY AND EDWARD REYNOLDS, JR., TO AMENDED AND SUPPLEMENTAL PETITION—Filed January 29, 1936

And Now Come Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr., each being one of the defendants in the above-named cause, and answer the allegations of the amended and supplemental petition (hereinafter referred to as the petition) therein as follows:

1. They admit the allegations of Paragraphs 1 and 2 of the petition.

2. They admit the allegation of Paragraph 3 of the petition that the defendant Columbia Gas & Electric Corporation has an office in the City of New York, New York, but they deny that it has a principal office and place of business in said City, and they deny, on information and belief, that Columbia Oil & Gasoline Corporation has a principal office and place of business in said City.

3. They admit the allegations of Paragraphs 4 and 5 of the petition.

4. They deny that they have any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 6 of the petition.

5. They admit the allegations of Paragraphs 7 and 8 of the petition.

[fol. 161] 6. They deny the allegation of Paragraph 9 of the petition and allege that Edward Reynolds, Jr., is a resident of the City of Stamford, Connecticut.

7. They deny that they have any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 10 and 11 of the petition.

8. They deny the allegations of Paragraph 12 of the petition except that they admit that the individuals referred to are citizens of the United States and that, during the following respective periods, the following thereof have been

(a) voting trustees of the common stock of Panhandle Eastern Pipe Line Company, to-wit:

Name	Periods
Philip G. Gossler	10/23/30—7/19/35.
George H. Howard	10/23/30—7/19/35

(b) directors of Panhandle Eastern Pipe Line Company, to-wit:

Name	Periods
George H. Howard	10/23/30—11/ 4/31
Philip G. Gossler	10/23/30— 5/26/31
Charles A. Munroe	10/23/30—11/30/31 and 5/ 5/32—present
Thomas R. Weymouth	11/30/31— 4/24/35
Thomas B. Gregory	3/ 9/31— 4/24/35
Edward Reynolds, Jr.	5/26/31— 5/ 5/32
Burt R. Bay	5/26/33—present
John H. Hillman, Jr.	3/14/32—present

(c) officers of said Panhandle Eastern Pipe Line Company, to-wit:

Name	Position	Period
Edward Reynolds, Jr.	Vice-President	11/25/30—3/4/35
Edward Reynolds, Jr.	Secretary	10/23/30—3/4/35
Burt R. Bay	Vice-President	1/ 2/30—5/26/33
Burt R. Bay	President	5/26/33—present

[fol. 162] (d) directors of Columbia Gas & Electric Corporation, to-wit:

Name	Periods
George H. Howard	11/ 6/30— 1/31/35
Philip G. Gossler	10/ 1/26—present
Charles A. Munroe	1/ 4/29— 6/ 7/34
Thomas B. Gregory	10/ 1/26—present
Edward Reynolds, Jr.	9/11/34—present

(e) Officers of Columbia Gas & Electric Corporation, to-wit:

Name	Position	Period
Philip G. Gossler	President	10/ 4/26—present
Thomas R. Weymouth	Vice-President	4/9/31—present
Thomas B. Gregory	Vice-President	10/ 4/26—present
Edward Reynolds, Jr.	Vice-President	4/12/28—present
Edward Reynolds, Jr.	Secretary	10/ 4/26—4/ 4/35
Edward Reynolds, Jr.	Treasurer	10/ 4/26—4/12/28

(f) directors of Columbia Oil & Gasoline Corporation, to-wit:

Name	Periods
Philip G. Gossler	5/14/30—5/22/31
Charles A. Munroe	5/14/30—present
Thomas B. Gregory	5/14/30—6/ 7/34

(g) officers of Columbia Oil & Gasoline Corporation, to-wit:

Name	Position	Period
Philip G. Gossler	President	5/15/30—5/22/31
Charles A. Munroe	President	5/22/31—present
Thomas R. Weymouth	Vice-President	4/ 9/31—6/ 7/34
Thomas B. Gregory	Vice-President	5/15/30—6/ 7/34
Edward Reynolds, Jr.	Vice-President	5/15/30—3/ 4/35
Edward Reynolds, Jr.	Secretary	5/15/30—6/ 7/34

(h) voting trustees of the common stock of Columbia Oil & Gasoline Corporation, to-wit:

Name	Periods
Philip G. Gossler	5/15/30—5/22/31
Charles A. Munroe	5/22/31—present
Thomas B. Gregory	6/16/32—6/ 7/34

9. They deny the allegations of Paragraph 13 of the petition except that they admit that Columbia Gas & Electric

[fol. 163] Corporation is a holding company owning stocks and other securities of approximately 60 subsidiaries and except that they admit that said Columbia Gas & Electric Corporation has exercised its voting rights in the stock of the separate corporations owned by it (such thereof as are natural gas distributing corporations being each subject to regulation by the public authorities of the state in which such corporation distributes natural gas) and except that they admit that such corporations engaged in the natural gas business have integrated their respective systems by interconnecting pipe lines so that natural gas may be delivered by one corporation to another and thus form what may be broadly termed a single operating unit or system, which is sometimes referred to as Columbia System. They further admit that its said subsidiaries are, for convenience of description and economy of operation among themselves, divided into seven groups substantially as set out in said Paragraph 13 of the Petition.

10. They deny the allegations of Paragraph 14 of the petition except that they admit that Columbia Oil & Gasoline Corporation is a corporation of the State of Delaware, that it was organized by Columbia Gas & Electric Corporation, that all of its first preferred stock and all of its second preferred stock are owned by Columbia Gas & Electric Corporation and that all of its common stock has been deposited under a Voting Trust Agreement and Voting Trust Certificates were, on June 30, 1930, distributed to holders of record as of May 24, 1930 of the Common Stock of Columbia Gas [fol. 164] & Electric Corporation. They deny that Columbia Oil & Gasoline Corporation was organized to "hold" any properties of Columbia System in the sense connoting the retention by Columbia Gas & Electric Corporation of any beneficial ownership in such properties, or that any substantial gas producing properties (other than properties producing casinghead gas incidentally to oil operations) were transferred to Columbia Oil & Gasoline Corporation.

11. They deny the allegations of Paragraph 15 of the petition except that they admit that the said subsidiaries of Columbia Gas & Electric Corporation do operate in parts of the States of Indiana, Ohio, West Virginia, Kentucky, Pennsylvania, New York and Virginia; and they further admit that in the State of Ohio some of its subsidiaries operate under non-exclusive franchises lawfully granted by

duly constituted public authorities and at rates of service fixed by duly constituted public authorities.

12. They deny, on information and belief, the allegations of Paragraph 16 of the petition except that they admit that Missouri-Kansas Pipe Line Company was organized under the laws of the State of Delaware in 1928 for the alleged purpose of producing, transporting, distributing and selling natural gas; that in 1929 Panhandle Eastern Pipe Line Company was organized under the laws of the State of Delaware; and that Missouri-Kansas Pipe Line Company became the owner of the entire capital stock of said corporation.

13. They deny the allegations of Paragraph 17 of the petition.

14. They deny the allegations of Paragraph 18 of the petition except that they admit that on or about June 20, [fol. 165] 1930 the defendant Columbia Oil & Gasoline Corporation entered into an agreement with Missouri-Kansas Pipe Line Company, substantially in the form of Exhibit A to the Petition, but deny that the effect of said agreement is such as is alleged in said Paragraph 18. These defendants deny that said agreement was by its terms to expire on August 5, 1930, and allege that said agreement by its terms was not to be binding on either party unless Missouri-Kansas Pipe Line Company should, by August 5, 1930, furnish Columbia Oil & Gasoline Corporation with certain information, which information was essential to enable Columbia Oil & Gasoline Corporation to determine whether or not the representations on the part of Missouri-Kansas Pipe Line Company contained in said agreement were true and accordingly to enable Columbia Oil & Gasoline Corporation to determine whether or not it was required to consummate agreement. They deny the remaining allegations of Paragraph 18 of the petition and further allege that Columbia Oil & Gasoline Corporation extended the date for the furnishing of said information, first to August 20, 1930 and then to September 5, 1930, and that, on September 5, 1930, said information had not yet been furnished by Missouri-Kansas Pipe Line Company. They deny that the failure of Columbia Oil & Gasoline Corporation further to extend the period for the furnishing of said information constituted a means of carrying out any combination or

conspiracy or was with the intent by doing so of forcing Missouri-Kansas Pipe Line Company into receivership or in that way or in any other way preventing the completion of the Panhandle Eastern Pipe Line.

[fol. 166] 15. They deny the allegations of Paragraph 19 of the petition except that they deny that they have any knowledge or information sufficient to form a belief as to whether or not the purported agreement attached to the petition as Exhibit B was signed in the name of Missouri-Kansas Pipe Line Company by its President, Frank P. Parish and except that they deny that they have any knowledge or information thereof sufficient to form a belief as to the allegation that "Pursuant to said agreement Mokan did borrow for its corporate needs the sum of $3,000,000 and thereby avoided a receivership." They deny that any such agreement was ever authorized or approved by said Missouri-Kansas Pipe Line Company. They allege on information and belief that said purported agreement contains the following provision:

"This agreement shall be subject with respect to the obligations of the Central Company to the approval of the Board of Directors of the Central Company at a meeting to be held not later than September 17, 1930, and with respect to the obligations of the Missouri Company shall be subject to the approval of the Board of Directors of the Missouri Company at a meeting to be held not later than September 17, 1930 and also subject to the approval of the stockholders of Missouri Company."

These defendants further deny on information and belief that said purported agreement was ever approved by the Board of Directors of Missouri-Kansas Pipe Line Company. They further allege on information and belief that said Central Public Service Company was at the time of [fol. 167] the execution of said purported agreement, and has been ever since, financially unable to carry out the terms thereof.

16. They deny the allegations of Paragraph 20 of the petition except that they admit that the agreement dated September 17, 1930, attached to the petition as Exhibit C, was executed by the parties thereto and that they admit the substantial correctness of the quotations from said

agreement contained in Paragraph 20 of the petition. They pray leave to refer to the original of said agreement for the complete provisions thereof on the trial of this case.

17. They admit the allegations of Paragraph 21 of the petition that on or about September 30, 1930, an agreement supplemental to said contract of September 17, 1930, was entered into between Missouri-Kansas Pipe Line Company and the defendant Columbia Oil & Gasoline Corporation and that the essential terms of said agreement of September 30, 1930 are substantially as set forth in said Paragraph 21 of the petition. They deny the remaining allegations of said Paragraph 21 of the petition except that they admit that the defendant George H. Howard was President of The United Corporation and that said The United Corporation was the largest single stockholder in the defendant Columbia Gas & Electric Corporation; and they allege that, at the time of the selection of the defendant George H. Howard as the third voting trustee and the ninth director of Panhandle Eastern Pipe Line Company, the officers and directors of Missouri-Kansas Pipe Line Company were well acquainted with the facts that said George H. Howard was [fol. 168] President of The United Corporation and that said The United Corporation was the largest single stockholder in the defendant Columbia Gas & Electric Corporation.

18. They admit the allegations of Paragraph 22 of the petition except that they deny that the sale of the bonds of Panhandle Eastern Pipe Line Company by The National City Company to the defendant Columbia Oil & Gasoline Corporation was induced by the corporate defendants or either of them as a means of carrying out any combination or conspiracy.

19. They deny the allegations of Paragraph 23 of the petition except that they admit that, during the closing, on October 23, 1930, of the transactions provided for by the contract dated September 17, 1930, and shortly thereafter certain new officers were elected to manage and operate the affairs of Panhandle Eastern Pipe Line Company; and except that they admit the allegation that none of said new officers, with the exception of the defendant Burt R. Bay, had previously been identified either with Missouri-Kansas Pipe Line Company or with Panhandle Eastern Pipe Line Company.

20. They admit the allegations of Paragraph 24 of the petition that early in 1931 it became necessary for the defendant Columbia Oil & Gasoline Corporation and Missouri-Kansas Pipe Line Company to contribute additional funds for the completion of the natural gas pipe line of Panhandle Eastern Pipe Line Company; that for such contributions, Panhandle Eastern Pipe Line Company issued $9,981,000 of its 6% Promissory Notes due on October 2, 1950, which Notes were specifically subordinated to its First Mortgage [fol. 169] Bonds, and increased its outstanding capital stock from 10,000 to 229,800 shares; and that the defendant Columbia Oil & Gasoline Corporation received $4,495,500 in Notes and 114,900 shares of stock for its contribution. They deny that Missouri-Kansas Pipe Line Company received any of such Notes or stock. They admit the allegation that Panhandle Corporation was incorporated under the laws of Maryland, with an authorized capital of 1,000 shares, having a par value of $10 each, all of which said shares were issued to and owned by Missouri-Kansas Pipe Line Company in consideration of the transfer by Missouri-Kansas Pipe Line Company to said Panhandle Corporation of all of its stock in Panhandle Eastern Pipe Line Company and that Panhandle Corporation then issued its Two-Year 6% Collateral Trust Notes, due March 15, 1933, in the total principal amount of $4,940,000. They admit that Missouri-Kansas Pipe Line Company guaranteed the payment of said Panhandle Corporation Two-Year 6% Collateral Trust Notes, but they deny that as collateral for said Note issue Missouri-Kansas Pipe Line Company pledged its holdings of said Panhandle Eastern Pipe Line Company Notes or that Missouri-Kansas Pipe Line Company held any of such Panhandle Eastern Pipe Line Company Notes which it could pledge; and they allege, on information and belief, that Panhandle Corporation acquired $4,495,500 of Panhandle Eastern Pipe Line Company Notes and 114,900 shares of Panhandle Eastern Pipe Line Company stock and pledged such Notes and stock to secure its own Two-Year 6% Col- [fol. 170] lateral Trust Notes. They deny that they have sufficient knowledge or information to form a belief as to the allegation that Missouri-Kansas Pipe Line Company likewise issued its own Two-Year 6% Collateral Trust Notes, in the total principal sum of $1,060,000, which were in turn secured by Bonds of a similar principal amount of Kentucky Natural Gas Company and by 90%, or 900 shares,

of the outstanding capital stock of Panhandle Corporation. They deny all of the remaining allegations of said Paragraph 24 of the petition.

21. They deny the allegations of Paragraph 25 of the petition except that they admit that in March 1931 Panhandle Eastern Pipe Line Company took appropriate corporate action by which the Mortgage Trust Indenture between Panhandle Eastern Pipe Line Company and City Bank Farmers Trust Company, under which its First Mortgage Bonds had been issued, was supplemented and amended by a Supplemental Indenture dated March 27, 1931, but they deny that the provisions or legal effect of said Supplemental Indenture were as stated in Paragraph 25 of the petition, and pray leave to refer to the provisions of said Supplemental Indenture when produced on the trial. They allege, on information and belief, that said Supplemental Indenture was approved and authorized by all of the Directors of Panhandle Eastern Pipe Line Company present at the meeting at which said proposed Supplemental Indenture was submitted, including Frank P. Parish, W. G. Maguire and Francis I. Dupont, being three out of the four representatives of Missouri-Kansas Pipe Line [fol. 171] Company on said Board.

22. They deny the allegations of Paragraph 26 of the petition, except that they admit that, at a meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 26, 1931 the representatives of Missouri-Kansas Pipe Line Company on the Board of Directors of Panhandle Eastern Pipe Line Company presented a formal demand for a gas purchase contract; that, in response thereto, Fred W. Crawford (now deceased), who was then President of Panhandle Eastern Pipe Line Company and likewise an officer and director of the defendant Columbia Gas & Electric Corporation, read a statement in behalf of Panhandle Eastern Pipe Line Company, but they deny that the provisions or legal effect thereof were as stated in Paragraph 26 of the petition and pray leave to refer to the terms of said statement when produced on the trial; and that they admit that on June 5, 1931 a resolution was passed by the Board of Directors of Panhandle Eastern Pipe Line Company authorizing the officers and counsel of said corporation to prepare and submit a form of contract for the purchase of gas by Missouri-Kansas Pipe Line

Company in accordance with the provisions of said agreement of September 17, 1930.

23. They deny on information and belief the allegations of Paragraph 27 of the petition except that they admit that on March 18, 1932 receivers were appointed for said Missouri-Kansas Pipe Line Company and that since March 14, 1932 the defendant J. H. Hillman, Jr. and three other in-
[fol. 172] dividuals nominated by Panhandle Corporation have acted as Directors of Panhandle Eastern Pipe Line Company.

24. They deny the allegations of Paragraph 28 of the petition.

25. They deny the allegations of Paragraph 29 of the petition except that they admit that Exhibit E therein referred to and set out at Page 77 et seq. of the petition is a true copy of what it purports to be and that the summary of the provisions thereof contained in said Paragraph 29 of the petition is substantially correct; and they allege that said Plan of Re-adjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company was submitted to the Chancery Court of the State of Delaware by Henry T. Bush and C. Ray Phillips as Receivers of Missouri-Kansas Pipe Line Company and that said Court on or about March 29, 1935, declined to approve the same.

26. They deny the allegations of Paragraph 30 of the petition except that they admit that Exhibit F therein referred to and set out at Pages 118 et seq. of the petition is a true copy of what it purports to be; that at a duly called meeting of the Board of Directors of Panhandle Eastern Pipe Line Company at which a quorum was present the form, terms, provisions and conditions of said revised Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company, dated June 19, 1935, were approved and adopted; and that as shown in said Exhibit F on Pages 122 and 123 of the petition the carrying out of said Plan is specifically conditioned upon the termination of this suit.

[fol. 173] 27. They deny the allegations of Paragraph 31 of the petition except that they admit that defendant Columbia Oil & Gasoline Corporation is in a position, by the carrying into effect of the "Offer" and "Plan" of June 19,

1935, to obtain ownership of at least 87½% of the outstanding capital stock of Panhandle Eastern Pipe Line Company and except that they admit that the defendant Columbia Oil & Gasoline Corporation will be in a position to foreclose on the Mortgage Trust Indenture in said paragraph referred to after December 31, 1936, if said "Offer" and "Plan" shall not have been consummated by said date.

28. They deny the allegations of Paragraph 32 of the petition.

29. They deny the allegations of Paragraph 33 of the petition and reallege and incorporate the foregoing answers hereinabove set forth to paragraphs of said petition numbered 2, 13, 14, 15, 16, 20, 22, 26, 28, 31 and 32 as though fully set forth herein.

30. They deny the allegations of Paragraph 34 of the petition.

Wherefore these defendants pray that said amended supplemental petition be dismissed and that they may go hence without day and recover their costs herein, and for such other and proper relief as is equitable.

(Sgd.) Ward & Gray, (Sgd.) C. A. Southerland, Solicitors for Defendants Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr. (Sgd.) Cravath, deGersdorf, Swaine & Wood, of Counsel.

January 28, 1936.

[fol. 174] IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANTS COLUMBIA OIL & GASOLINE CORPORATION AND CHARLES A. MUNROE TO AMENDED AND SUPPLEMENTAL PETITION—Filed January 29, 1936

And Now Come Columbia Oil & Gasoline Corporation and Charles A. Munroe, each being one of the defendants in the above-named cause, and answer the allegations of the amended and supplemental petition (hereinafter referred to as the petition) therein as follows:

1. They admit the allegations of Paragraphs 1 and 2 of the petition.

2. They admit the allegation of Paragraph 3 of the petition that the defendant Columbia Oil & Gasoline Corporation has an office in the City of New York, New York, but they deny that it has a principal office and place of business in said City, and they deny, on information and belief, that Columbia Gas & Electric Corporation has a principal office and place of business in said City.

3. They deny that they have any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 4 and 5 of the petition.

4. They admit the allegation of Paragraph 6 of the petition.

5. They deny that they have any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 7 to 11, inclusive, of the petition.

6. They deny the allegations of Paragraph 12 of the petition except that they admit that the individuals referred to [fol. 175] are citizens of the United States and that, during the following respective periods, the following thereof have been

(a) voting trustees of the common stock of Panhandle Eastern Pipe Line Company, to-wit:

Name	Periods
Philip G. Gossler	10/23/30– 7/19/35
George H. Howard	10/23/30– 7/19/35

(b) directors of Panhandle Eastern Pipe Line Company, to-wit:

Name	Periods
George H. Howard	10/23/30–11/ 4/31
Philip G. Gossler	10/23/30– 5/26/31
Charles A. Munroe	10/23/30–11/30/31 and 5/ 5/32–present
Thomas R. Weymouth	11/30/31– 4/24/35
Thomas B. Gregory	3/ 9/31– 4/24/35
Edward Reynolds, Jr.	5/26/31– 5/ 5/32
Burt R. Bay	5/26/33–present
John H. Hillman, Jr.	3/14/32–present

(c) officers of said Panhandle Eastern Pipe Line Company, to-wit:

Name	Position	Periods
Edward Reynolds, Jr.	Vice-President	11/25/30– 3/ 4/35
Edward Reynolds, Jr.	Secretary	10/23/30– 3/ 4/35
Burt R. Bay	Vice-President	1/ 2/30– 5/26/33
Burt R. Bay	President	5/26/33–present

(d) directors of Columbia Gas & Electric Corporation, to-wit:

Name	Periods
George H. Howard	11/ 6/30– 1/31/35
Philip G. Gossler	10/ 1/26–present
Charles A. Munroe	1/ 4/29– 6/ 7/34
Thomas B. Gregory	10/ 1/26–present
Edward Reynolds, Jr.	9/11/34/present

[fol. 176]

(e) officers of Columbia Gas & Electric Corporation, to-wit:

Name	Position	Period
Philip G. Gossler	President	10/ 4/26–present
Thomas R. Weymouth	Vice-President	4/ 9/31–present
Thomas B. Gregory	Vice-President	10/ 4/26–present
Edward Reynolds, Jr.	Vice-President	4/12/28–present
Edward Reynolds, Jr.	Secretary	10/ 4/26– 4/ 4/35
Edward Reynolds, Jr.	Treasurer	10/ 4/26– 4/12/28

(f) directors of Columbia Oil & Gasoline Corporation, to-wit:

Name	Periods
Philip G. Gossler	5/14/30– 5/22/31
Charles A. Munroe	5/14/30–present
Thomas B. Gregory	5/14/30– 6/ 7/34

(g) offiters of Columbia Oil & Gasoline Corporation, to-wit:

Name	Position	Periods
Philip G. Gossler	President	5/15/30– 5/22/31
Charles A. Munroe	President	5/22/31–present
Thomas R. Weymouth	Vice-President	4/ 9/31– 6/ 7/34
Thomas B. Gregory	Vice-President	5/15/30– 6/ 7/34
Edward Reynolds, Jr.	Vice-President	5/15/30– 3/ 4/35
Edward Reynolds, Jr.	Secretary	5/15/30– 6/ 7/34

(h) voting trustees of the common stock of Columbia Oil & Gasoline Corporation, to-wit:

Name	Periods
Philip G. Gossler	5/15/30– 5/22/31
Charles A. Munroe	5/22/31–present
Thomas B. Gregory	6/16/32– 6/ 7/34

7. They deny that they have any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 13 of the petition except that they admit that Columbia Gas & Electric Corporation is a holding company owning stocks and other securities of approximately 60 subsidiaries, which subsidiaries are sometimes collectively referred to as Columbia System.

[fol. 177] 8. They deny the allegations of Paragraph 14 of the petition except that they admit that Columbia Oil & Gasoline Corporation is a corporation of the State of Delaware, that it was organized by Columbia Gas & Electric Corporation, that all of its first preferred stock and all of its second preferred stock are owned by Columbia Gas & Electric Corporation and that all of its common stock has been deposited under a Voting Trust Agreement and Voting Trust Certificates were, on June 30, 1930, distributed to holders of record as of May 24, 1930 of the Common Stock of Columbia Gas & Electric Corporation. They deny that Columbia Oil & Gasoline Corporation was organized to "hold" any properties of Columbia System in the sense connoting the retention by Columbia Gas & Electric Corporation of any beneficial ownership in such properties, or that any substantial gas producing properties (other than

properties producing casinghead gas incidentally to oil operations) were transferred to Columbia Oil & Gasoline Corporation.

9. They deny that they have any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 15 of the petition.

10. They deny, on information and belief, the allegations of Paragraph 16 of the petition except that they admit that Missouri-Kansas Pipe Line Company was organized under the laws of the State of Delaware in 1928 for the alleged purpose of producing, transporting, distributing and selling natural gas; that in 1929 Panhandle Eastern Pipe Line Company was organized under the laws of the State of Delaware; and that Missouri-Kansas Pipe Line Company [fol. 178] became the owner of the entire capital stock of said corporation.

11. They deny the allegations of Paragraph 17 of the petition.

12. They deny the allegations of Paragraph 18 of the petition except that they admit that on or about June 20, 1930 the defendant Columbia Oil & Gasoline Corporation entered into an agreement with Missouri-Kansas Pipe Line Company, substantially in the form of Exhibit A to the Petition, but deny that the effect of said agreement is such as is alleged in said Paragraph 18. These defendants deny that said agreement was by its terms to expire on August 5, 1930, and allege that said agreement by its terms was not to be binding on either party unless Missouri-Kansas Pipe Line Company should, by August 5, 1930, furnish Columbia Oil & Gasoline Corporation with certain information, which information was essential to enable Columbia Oil & Gasoline Corporation to Determine whether or not the representations on the part of Missouri-Kansas Pipe Line Company contained in said agreement were true, and accordingly to enable Columbia Oil & Gasoline Corporation to determine whether or not it was required to consummate said agreement. They deny the remaining allegations of Paragraph 18 of the petition and further allege that Columbia Oil & Gasoline Corporation extended the date for the furnishing of said information, first to August 20, 1930 and then to September 5, 1930, and that, on September 5, 1930, said information had not yet been furnished by Mis-

souri-Kansas Pipe Line Company. They deny that the [fol. 179] failure of Columbia Oil & Gasoline Corporation further to extend the period for the furnishing of said information constituted a means of carrying out any combination or conspiracy or was with the intent by doing so of forcing Missouri-Kansas Pipe Line Company into receivership or in that way or in any other way preventing the completion of the Panhandle Eastern Pipe Line.

13. They deny the allegations of Paragraph 19 of the petition except that they deny they have any knowledge or information sufficient to form a belief as to whether or not the purported agreement attached to the petition as Exhibit B was signed in the name of Missouri-Kansas Pipe Line Company by its President, Frank P. Parish and except that they deny that they have any knowledge or information thereof sufficient to form a belief as to the allegation that "Pursuant to said agreement Mokan did borrow for its corporate needs the sum of $3,000,000 and thereby avoided a receivership." They deny that any such agreement was ever authorized or approved by said Missouri-Kansas Pipe Line Company. They allege on information and belief that said purported agreement contains the following provision:

"This agreement shall be subject with respect to the obligations of the Central Company to the approval of the Board of Directors of the Central Company at a meeting to be held not later than September 17, 1930, and with respect to the obligations of the Missouri Company shall be subject to the approval of the Board of Directors of the Missouri [fol. 180] Company at a meeting to be held not later than September 17, 1930 and also subject to the approval of the stockholders of Missouri Company."

These defendants further deny on information and belief that said purported agreement was ever approved by the Board of Directors of Missouri-Kansas Pipe Line Company. They further allege on information and belief that said Central Public Service Company was at the time of the execution of said purported agreement, and has been ever since, financially unable to carry out the terms thereof.

14. They deny the allegations of Paragraph 20 of the petition except that they admit that the agreement dated September 17, 1930, attached to the petition as Exhibit C, was executed by the parties thereto and that they admit the

substantial correctness of the quotations from said agreement contained in Paragraph 20 of the petition. They pray leave to refer to the original of said agreement for the complete provisions thereof on the trial of this case.

15. They admit the allegations of Paragraph 21 of the petition that on or about September 30, 1930, an agreement supplemental to said contract of September 17, 1930, was entered into between Missouri-Kansas Pipe Line Company and the defendant Columbia Oil & Gasoline Corporation and that the essential terms of said agreement of September 30, 1930, are substantially as set forth in said Paragraph 21 of the petition. They deny the remaining allegations of said Paragraph 21 of the petition except that they admit that the defendant George H. Howard was President of [fol. 181] The United Corporation and that said The United Corporation was the largest single stockholder in the defendant Columbia Gas & Electric Corporation; and they allege that, at the time of the selection of the defendant George H. Howard as the third voting trustee and the ninth director of Panhandle Eastern Pipe Line Company, the officers and directors of Missouri-Kansas Pipe Line Company were well acquainted with the facts that said George H. Howard was President of The United Corporation and that said The United Corporation was the largest single stockholder in the defendant Columbia Gas & Electric Corporation.

16. They admit the allegations of Paragraph 22 of the petition except that they deny that the sale of the bonds of Panhandle Eastern Pipe Line Company by The National City Company to the defendant Columbia Oil & Gasoline Corporation was induced by the corporate defendants or either of them as a means of carrying out any combination or conspiracy.

17. They deny the allegations of Paragraph 23 of the petition except that they admit that, during the closing, on October 23, 1930, of the transactions provided for by the contract dated September 17, 1930, and shortly thereafter, certain new officers were elected to manage and operate the affairs of Panhandle Eastern Pipe Line Company; and except that they admit the allegation that none of said new officers, with the exception of the defendant Burt R. Bay, had previously been identified either with Missouri-Kansas

Pipe Line Company or with Panhandle Eastern Pipe Line Company.

[fol. 182] 18. They admit the allegations of Paragraph 24 of the petition that early in 1931 it became necessary for the defendant Columbia Oil & Gasoline Corporation and Missouri-Kansas Pipe Line Company to contribute additional funds for the completion of the natural gas pipe line of Panhandle Eastern Pipe Line Company; that for such contributions, Panhandle Eastern Pipe Line Company issued $9,981,000 of its 6% Promissory Notes due on October 2, 1950, which Notes were specifically subordinated to its First Mortgage Bonds, and increased its outstanding capital stock from 10,000 to 229,800 shares; and that the defendant Columbia Oil & Gasoline Corporation received $4,495,500 in Notes and 114,900 shares of stock for its contribution. They deny that Missouri-Kansas Pipe Line Company received any of such Notes or stock. They admit the allegation that Panhandle Corporation was incorporated under the laws of Maryland, with an authorized capital of 1000 shares, having a par value of $10 each, all of which said shares were issued to and owned by Missouri-Kansas Pipe Line Company in consideration of the transfer by Missouri-Kansas Pipe Line Company to said Panhandle Corporation of all of its stock in Panhandle Eastern Pipe Line Company and that Panhandle Corporation then issued its Two-Year 6% Collateral Trust Notes, due March 15, 1933, in the total principal amount of $4,940,000. They admit that Missouri-Kansas Pipe Line Company guaranteed the payment of said Panhandle Corporation Two-Year 6% Collateral Trust Notes, but they deny that as collateral for said Note issue Missouri-Kansas Pipe Line Company [fol. 183] pledged its holdings of said Panhandle Eastern Pipe Line Company Notes or that Missouri-Kansas Pipe Line Company held any of such Panhandle Eastern Pipe Line Company Notes which it could pledge; and they allege, on information and belief, that Panhandle Corporation acquired $4,495,500 of Panhandle Eastern Pipe Line Company Notes and 114,900 shares of Panhandle Eastern Pipe Line Company stock and pledged such Notes and stock to secure its own Two-Year 6% Collateral Trust Notes. They deny that they have sufficient knowledge or information to form a belief as to the allegation that Missouri-Kansas Pipe Line Company likewise issued its own two-year 6% Collateral Trust Notes, in the total principal sum of $1,060,000, which

were in turn secured by Bonds of a similar principal amount of Kentucky Natural Gas Company and by 90%, or 900 shares, of the outstanding capital stock of Panhandle Corporation. They deny all of the remaining allegations of said Paragraph 24 of the petition.

19. They deny the allegations of Paragraph 25 of the petition except that they admit that in March, 1931 Panhandle Eastern Pipe Line Company took appropriate corporate action by which the Mortgage Trust Indenture between Panhandle Eastern Pipe Line Company and City Bank Farmers Trust Company, under which its First Mortgage Bonds had been issued, was supplemented and amended by a Supplemental Indenture dated March 27, 1931, but they deny that the provisions or legal effect of said Supplemental Indenture were as stated in Paragraph 25 of the petition, and pray leave to refer to the provisions of [fol. 184] said Supplemental Indenture when produced on the trial. They allege, on information and belief, that said Supplemental Indenture was approved and authorized by all of the Directors of Panhandle Eastern Pipe Line Company present at the meeting at which said proposed Supplemental Indenture was submitted, including Frank P. Parish, W. G. Maguire and Francis I. Dupont, being three out of the four representatives of Missouri-Kansas Pipe Line Company on said Board.

20. They deny the allegations of Paragraph 26 of the petition, except that they admit that, at a meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 26, 1931 the representatives of Missouri-Kansas Pipe Line Company on the Board of Directors of Panhandle Eastern Pipe Line Company presented a formal demand for a gas purchase contract; that, in response thereto, Fred W. Crawford (now deceased), who was then President of Panhandle Eastern Pipe Line Company and likewise an officer and director of the defendant Columbia Gas & Electric Corporation, read a statement in behalf of Panhandle Eastern Pipe Line Company, but they deny that the provisions or legal effect thereof were as stated in Paragraph 26 of the petition and pray leave to refer to the terms of said statement when produced on the trial; and that they admit that on June 5, 1931 a resolution was passed by the Board of Directors of Panhandle Eastern Pipe Line Company authorizing the officers and counsel of said corpo-

[fol. 185] ration to prepare and submit a form of contract for the purchase of gas by Missouri-Kansas Pipe Line Company in accordance with the provisions of said agreement of September 17, 1930.

21. They deny, on information and belief, the allegations of Paragraph 27 of the petition except that they admit that on March 18, 1932 receivers were appointed for said Missouri-Kansas Pipe Line Company and that since March 14, 1932 the defendant J. H. Hillman, Jr. and three other individuals nominated by Panhandle Corporation have acted as Directors of Panhandle Eastern Pipe Line Company.

22. They deny the allegations of Paragraph 28 of the petition.

23. They deny the allegations of Paragraph 29 of the petition except that they admit that Exhibit E therein referred to and set out at Page 77 et seq. of the petition is a true copy of what it purports to be and that the summary of the provisions thereof contained in said Paragraph 29 of the petition is substantially correct; and they allege that said Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company was submitted to the Chancery Court of the State of Delaware by Henry T. Bush and C. Ray Phillips as Receivers of Missouri-Kansas Pipe Line Company and that said Court on or about March 29, 1935, declined to approve the same.

24. They deny the allegations of Paragraph 30 of the petition except that they admit that Exhibit F therein referred to and set out at Pages 118 et seq. of the petition is a true copy of what it purports to be; that at a duly [fol. 186] called meeting of the Board of Directors of Panhandle Eastern Pipe Line Company at which a quorum was present the form, terms, provisions and conditions of said revised Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company, dated June 19, 1935, were approved and adopted; and that as shown in said Exhibit F on Pages 122 and 123 of the petition the carrying out of said Plan is specifically conditioned upon the termination of this suit.

25. They deny the allegations of Paragraph 31 of the petition except that they admit that defendant Columbia Oil & Gasoline Corporation is in a position, by the carrying

into effect of the "Offer" and "Plan" of June 19, 1935, to obtain ownership of at least 87½% of the outstanding capital stock of Panhandle Eastern Pipe Line Company and except that they admit that the defendant Columbia Oil & Gasoline Corporation will be in a position to foreclose on the Mortgage Trust Indenture in said paragraph referred to after December 31, 1936 if said "Offer" and "Plan" shall not have been consummated by said date.

26. They deny the allegations of Paragraph 32 of the petition.

27. They deny the allegations of Paragraph 33 of the petition and reallege and incorporate the foregoing answers hereinabove set forth to paragraphs of said petition numbered 2, 13, 14, 15, 16, 20, 22, 26, 28, 31 and 32 as though fully set forth herein.

[fol. 187] 28. They deny the allegations of Paragraph 34 of the petition.

Wherefore these defendants pray that said amended supplemental petition be dismissed and that they may go hence without day and recover their costs herein, and for such other and proper relief as is equitable.

(Sgd.) Hugh M. Morris, Ivan Culbertson, Solicitors for Defendant, Columbia Oil & Gasoline Corporation and Charles A. Munroe; Howard H. Swain, of Counsel.

January 28, 1936.

[fol. 188] In United States District Court

Answer of John H. Hillman, Jr., to Amended and Supplemental Petition—Filed January 29, 1936

And Now Comes John H. Hillman, Jr., one of the defendants in the above named cause, and answers the allegations of the amended and supplemental petition (hereinafter referred to as the petition) therein as follows:

(1) He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 1 to 10, inclusive, of the petition.

(2) He admits the allegation of Paragraph 11 of the petition.

(3) He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 12 of the petition, except that he admits that he is a citizen of the United States, and except that he admits that he has been a Director of Panhandle Eastern Pipe Line Company from March 14, 1932 to the present time.

(4) He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 13 to 16, inclusive, of the petition.

(5) He denies the allegations of Paragraph 17 of the petition.

(6) He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth *set* [fol. 189] *forth* in Paragraphs 18 to 23, inclusive, of the petition.

(7) He admits the allegations of Paragraph 24 of the petition that early in 1931 it became necessary for the defendant Columbia Oil & Gasoline Corporation and Missouri-Kansas Pipe Line Company to contribute additional funds for the completion of the natural gas pipe line of Panhandle Eastern Pipe Line Company; that for such contributions, Panhandle Eastern Pipe Line Company issued $9,981,000 of its 6% Promissory Notes due October 2, 1950, which Notes were specifically subordinated to its First Mortgage Bonds, and increased its outstanding capital stock from 10,000 to 229,800 shares; and that the defendant Columbia Oil & Gasoline Corporation received $4,495,500 in Notes and 114,900 shares of stock for its contribution. He admits the allegation that Panhandle Corporation was incorporated under the laws of Maryland, with an authorized capital of 1,000 shares, having a par value of $10 each, all of which such shares were issued to and owned by Missouri-Kansas Pipe Line Company in consideration of the transfer by Missouri-Kansas Pipe Line Company to said Panhandle Corporation of all of its stock in Panhandle Eastern Pipe Line Company and that Panhandle Corporation then issued its Two-Year 6% Collateral Trust Notes, due March 15, 1933, in the total principal amount of $4,940,000. He admits that Missouri-Kansas Pipe Line Company guaranteed the payment of said Panhandle Corporation Two-Year 6% Collateral Trust Notes; but he denies that as collateral for said Note

issue Missouri-Kansas Pipe Line Company pledged its holdings of said Panhandle Eastern Pipe Line Company Notes or that Missouri-Kansas Pipe Line Company held any of [fol. 190] such Panhandle Eastern Pipe Line Company Notes which it could pledge; and he alleges that Panhandle Corporation acquired $4,495,500 of Panhandle Eastern Pipe Line Company Notes and 114,900 shares of Panhandle Eastern Pipe Line Company stock and pledged such Notes and stock to secure its own Two-Year 6% Collateral Trust Notes. He admits that Missouri-Kansas Pipe Line Company issued its own Two-Year 6% Collateral Trust Notes, in the total principal sum of $1,060,000, which were in turn secured by Bonds of a similar principal amount of Kentucky Natural Gas Company and by 90%, or 900 shares, of the outstanding capital stock of Panhandle Corporation. He denies all of the remaining allegations of said Paragraph 24 of the petition, except that he admits that he and a member of Dillon, Reed & Company had certain conversations with the defendant Gossler prior to the financing described in said Paragraph 24, as to the value and the safety of the securities of Panhandle Corporation and Mokan proposed to be purchased, in which the defendant Gossler pointed out certain dangers in the proposed financing which might result in a default of the proposed securities.

(8) He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 25 of the petition.

(9) He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in the first sentence of Paragraph 26 of the petition; and he denies the allegations set forth in the second sentence of Paragraph 26 of the petition.

[fol. 191] (10) He denies the allegations of Paragraph 27 of the petition, except that he admits that on March 18, 1932 receivers were appointed for Missouri-Kansas Pipe Line Company and that since March 14, 1932 he and three other individuals nominated by Panhandle Corporation have acted as Directors of Panhandle Eastern Pipe Line Company; and that in February, 1933, certain corporations in which he was interested became the owners of 679 shares of stock of Panhandle Corporation, which corporation owns one-half

of the outstanding capital stock of Panhandle Eastern Pipe Line Company.

(11) He denies the allegations of Paragraph 28 of the petition.

(12) He denies the allegations of Paragraph 29 of the petition, except that he admits that Exhibit E therein referred to and set out at page 77 et seq. of the petition is a true copy of what it purports to be and that the summary of the provisions thereof contained in said Paragraph 29 of the petition is substantially correct; and he alleges that said Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company was submitted to the Chancery Court of the State of Delaware by Henry T. Bush and C. Ray Phillips as Receivers of Missouri-Kansas Pipe Line Company and that said Court, on or about March 29, 1935, declined to approve the same.

(13) He denies the allegations of Paragraph 30 of the petition, except that he admits that Exhibit F therein referred to and set out at Pages 118 et seq. of the petition [fol. 192] is a true copy of what it purports to be; that at a duly called meeting of the Board of Directors of Panhandle Eastern Pipe Line Company at which a quorum was present the form, terms, provisions and conditions of said revised Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company, dated June 19, 1935, were approved and adopted; and that as shown in said Exhibit F on Pages 122 and 123 of the petition the carrying out of said Plan is specifically conditioned upon the termination of this suit.

(14) He denies the allegations of Paragraph 31 of the petition, except that he denies that he has any knowledge or information sufficient to form a belief as to the allegation that defendant Columbia Oil & Gasoline Corporation is in a position to obtain ownership of 100% of the outstanding capital stock of Panhandle Eastern Pipe Line Company or to foreclose on the Mortgage Trust Indenture in said Paragraph referred to.

(15) He denies the allegations of Paragraph 32 of the petition.

(16) He denies the allegations of Paragraph 33 of the petition and re-alleges and incorporates the foregoing an-

swers hereinabove set forth to Paragraphs of said petition numbered 2, 13, 14, 15, 16, 20, 22, 26, 28, 31 and 32 as though fully set forth herein.

(17) He denies the allegations of Paragraph 34 of the petition.

[fol. 193] Wherefore, this defendant prays that said amended supplemental petition be dismissed and that he may go hence without delay and recover his costs herein, and for such other and proper relief as is equitable.

(Sgd.) H. F. Reindel, C. S. Layton, Solicitors for Defendant, John H. Hillman, Jr.

[fol. 194] IN UNITED STATES DISTRICT COURT

ANSWER OF BURT R. BAY TO AMENDED AND SUPPLEMENTAL PETITION—Filed January 29, 1936

And Now Comes Burt R. Bay, one of the defendants in the above-named cause, and answers the allegations of the amended and supplemental petition (hereinafter referred to as the petition) therein as follows:

1. He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 1 to 9, inclusive, of the petition.

2. He admits the allegation of Paragraph 10 of the petition.

3. He Denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 11 of the petition.

4. He Denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 12 of the petition except that he admits that the individuals referred to are citizens of the United States and that, during the following respective periods, the following thereof have been

(a) voting trustees of the common stock of Panhandle Eastern Pipe Line Company, to-wit:

Name	Periods
Philip G. Gossler	10/23/30– 7/19/35
George H. Howard	10/23/30– 7/19/35

[fol. 195] (b) directors of Panhandle Eastern Pipe Line Company, to-wit:

Name	Periods
George H. Howard	10/23/30–11/ 4/31
Philip G. Gossler	10/23/30– 5/26/31
Charles A. Munroe	10/23/30–11/30/31 and 5/ 5/32–present
Thomas R. Weymouth	11/30/31– 4/24/35
Thomas B. Gregory	3/ 9/31– 4/24/35
Edward Reynolds, Jr.	5/26/31– 5/ 5/32
Burt R. Bay	5/26/33–present
John H. Hillman, Jr.	3/14/32–present

(c) Officers of said Panhandle Eastern Pipe Line Company, to-wit:

Name	Position	Periods
Edward Reynolds, Jr.	Vice-President	11/25/30– 3/ 4/35
Edward Reynolds, Jr.	Secretary	10/23/30– 3/ 4/35
Burt R. Bay	Vice-President	1/ 2/30– 5/26/33
Burt R. Bay	President	5/26/33–present

5. He denies that he has any knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs 13 to 15, inclusive, of the petition.

6. He denies, on information and belief, the allegations of Paragraph 16 of the petition except that it admits that Missouri-Kansas Pipe Line Company was organized under the laws of the State of Delaware in 1928 for the alleged purpose of producing, transporting, distributing and selling natural gas; that in 1929 Panhandle Eastern Pipe Line Company was organized under the laws of the State of Delaware; and that Missouri-Kansas Pipe Line Company became the owner of the entire capital stock of said corporation.

7. He denies the allegations of Paragraph 17 of the petition.

[fol. 196] 8. He denies the allegations of Paragraph 18 of the petition except that he admits that on or about June 20, 1930 the defendant Columbia Oil & Gasoline Corporation entered into an agreement with Missouri-Kansas Pipe Line Company, substantially in the form of Exhibit A to the Petition.

9. He denies the allegations of Paragraph 19 of the petition except that he admits that the purported agreement attached to the petition as Exhibit B was signed in the name of Missouri-Kansas Pipe Line Company by its President, Frank P. Parish and except that he admits that thereafter Missouri-Kansas Pipe Line Company borrowed the sum of

$3,000,000. He alleges on information and belief that said purported agreement contains the following provision:

"This agreement shall be subject with respect to the obligations of the Central Company to the approval of the Board of Directors of the Central Company at a meeting to be held not later than September 17, 1930, and with respect to the obligations of the Missouri Company shall be subject to the approval of the Board of Directors of the Missouri Company at a meeting to be held not later than September 17, 1930 and also subject to the approval of the stockholders of Missouri Company."

This defendant further denies that said purported agreement was ever approved by the Board of Directors of Missouri-Kansas Pipe Line Company.

10. He denies the allegations of Paragraph 20 of the petition except that he admits that the agreement dated Septem- [fol. 197] ber 17, 1930, attached to the petition as Exhibit C, was executed by the parties thereto and that he admits the substantial correctness of the quotations from said agreement contained in Paragraph 20 of the petition. He prays leave to refer to the original of said agreement for the complete provisions thereof on the trial of this case.

11. He admits the allegations of Paragraph 21 of the petition that on or about September 30, 1930, an agreement supplemental to said contract of September 17, 1930, was entered into between Missouri-Kansas Pipe Line Company and the defendant Columbia Oil & Gasoline Corporation and that the essential terms of said agreement of September 30, 1930 are substantially as set forth in said Paragraph 21 of the petition. He denies that he has any knowledge or information sufficient to form a belief as to the remaining allegations set forth in said Paragraph 21 of the petition.

12. He admits the allegations of Paragraph 22 of the petition except that he denies that he has any knowledge or information sufficient to form a belief as to the allegation set forth in said Paragraph 22 of the petition to the effect that the sale of the bonds of Panhandle Eastern Pipe Line Company by The National City Company to the defendant Columbia Oil & Gasoline Corporation was induced by the corporate defendants or either of them as a means of carrying out any combination or conspiracy.

13. He denies on information and belief the allegations of Paragraph 23 of the petition except that he admits that, on October 23, 1930 and shortly thereafter, certain new [fol. 198] officers were elected to manage and operate the affairs of Panhandle Eastern Pipe Line Company; and except that he admits the allegation that none of said new officers, with the exception of himself, had previously been identified either with Missouri-Kansas Pipe Line Company or with Panhandle Eastern Pipe Line Company.

14. He admits the allegations of Paragraph 24 of the petition that early in 1931 it became necessary for the defendant Columbia Oil & Gasoline Corporation and Missouri-Kansas Pipe Line Company to contribute additional funds for the completion of the natural gas pipe line of Panhandle Eastern Pipe Line Company; that for such contributions, Panhandle Eastern Pipe Line Company issued $9,981,000 of its 6% Promissory Notes due on October 2, 1950, which Notes were specifically subordinated to its First Mortgage Bonds, and increased its outstanding capital stock from 10,000 to 229,800 shares; and that the defendant Columbia Oil & Gasoline Corporation received $4,495,500 in Notes and 114,900 shares of stock for its contribution. He denies that Missouri-Kansas Pipe Line Company received any of such Notes or stock. He admits the allegation that Panhandle Corporation was incorporated under the laws of Maryland, with an authorized capital of 1,000 shares, having a par value of $10 each, all of which said shares were issued to and owned by Missouri-Kansas Pipe Line Company in consideration of the transfer by Missouri-Kansas Pipe Line Company to said Panhandle Corporation [fol. 199] of all of its stock in Panhandle Eastern Pipe Line Company and that Panhandle Corporation then issued its Two-Year 6% Collateral Trust Notes, due March 15, 1933, in the total principal amount of $4,940,000. He admits that Missouri-Kansas Pipe Line Company guaranteed the payment of said Panhandle Corporation Two-Year 6% Collateral Trust Notes, but he denies that as collateral for said Note issue Missouri-Kansas Pipe Line Company pledged its holdings of said Panhandle Eastern Pipe Line Company Notes or that Missouri-Kansas Pipe Line Company held any of such Panhandle Eastern Pipe Line Company Notes which it could pledge; and he alleges, on information and belief, that Panhandle Corporation acquired $4,495,500 of

Panhandle Eastern Pipe Line Company Notes and 114,900 shares of Panhandle Eastern Pipe Line Company stock and pledged such Notes and stock to secure its own Two-Year 6% Collateral Trust Notes. He denies that he has sufficient knowledge or information to form a belief as to the allegation that Missouri-Kansas Pipe Line Company likewise issued its own Two-Year 6% Collateral Trust Notes, in the total principal sum of $1,060,000, which were in turn secured by Bonds of a similar principal amount of Kentucky Natural Gas Company and by 90%, or 900 shares, of the outstanding capital stock of Panhandle Corporation. He denies all of the remaining allegations of said Paragraph 24 of the petition.

15. He denies the allegations of Paragraph 25 of the petition except that he admits that in March, 1931 Panhandle Eastern Pipe Line Company took appropriate cor- [fol. 200] porate action by which the Mortgage Trust Indenture between Panhandle Eastern Pipe Line Company and City Bank Farmers Trust Company, under which its First Mortgage Bonds had been issued, was supplemented and amended by a Supplemental Indenture dated March 27, 1931, but he denies that the provisions or legal effect of said Supplemental Indenture were as stated in Paragraph 25 of the petition, and prays leave to refer to the provisions of said Supplemental Indenture when produced on the trial. He alleges, on information and belief, that said Supplemental Indenture was approved and authorized by all of the Directors of Panhandle Eastern Pipe Line Company present at the meeting at which said proposed Supplemental Indenture was submitted, including Frank P. Parish, W. G. Maguire and Francis I. Dupont, being three out of the four representatives of Missouri-Kansas Pipe Line Company on said Board.

16. He denies on information and belief the allegations of Paragraph 26 of the petition, except that he admits that, at a meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 26, 1931 the representatives of Missouri-Kansas Pipe Line Company on the Board of Directors of Panhandle Eastern Pipe Line Company presented a formal demand for a gas purchase contract; that, in response thereto, Fred W. Crawford (now deceased), who was then President of Panhandle Eastern Pipe Line Company and likewise an officer and director of

the defendant Columbia Gas & Electric Corporation, read a statement in behalf of Panhandle Eastern Pipe Line Company, but he denies that the provisions or legal effect thereof [fol. 201] were as stated in Paragraph 26 of the petition and prays leave to refer to the terms of said statement when produced on the trial; and that he admits that on June 5, 1931 a resolution was passed by the Board of Directors of Panhandle Eastern Pipe Line Company authorizing the officers and counsel of said corporation to prepare and submit a form of contract for the purchase of gas by Missouri-Kansas Pipe Line Company in accordance with the provisions of said agreement of September 17, 1930.

17. He denies on information and belief the allegations of Paragraph 27 of the petition except that he admits that on March 18, 1932 receivers were appointed for said Missouri-Kansas Pipe Line Company and that since March 14, 1932 the defendant J. H. Hillman, Jr. and three other individuals nominated by Panhandle Corporation have acted as Directors of Panhandle Eastern Pipe Line Company.

18. He denies the allegations of Paragraph 28 of the petition.

19. He denies the allegations of Paragraph 29 of the petition except that he admits that Exhibit E therein referred to and set out at Page 77 et seq. of the petition is a true copy of what it purports to be and that the summary of the provisions thereof contained in said Paragraph 29 of the petition is substantially correct; and he alleges that said Plan of Readjustment of Funded Debt and Capitalization of Panhandle Eastern Pipe Line Company was submitted to the Chancery Court of the State of Delaware by Henry T. Bush and C. Ray Phillips as Receivers of Missouri-Kansas Pipe Line Company and that said Court on [fol. 202] or about March 29, 1935, declined to approve the same.

20. He denies the allegations of Paragraph 30 of the petition except that he admits that Exhibit F therein referred to and set out at Pages 118 et seq. of the petition is a true copy of what it purports to be; that at a duly called meeting of the Board of Directors of Panhandle Eastern Pipe Line Company at which a quorum was present the form, terms, provisions and conditions of said revised Plan of Readjustment of Funded Debt and Capitalization

of Panhandle Eastern Pipe Line Company, dated June 19, 1935, were approved and adopted; and that as shown in said Exhibit F on Pages 122 and 123 of the petition the carrying out of said Plan is specifically conditioned upon the termination of this suit.

21. He denies the allegations of Paragraph 31 of the petition except that he admits that defendant Columbia Oil & Gasoline Corporation is in a position, by the car-ying into effect of the "Offer" and "Plan" of June 19, 1935, to obtain ownership of at least 87½% of the outstanding capital stock of Panhandle Eastern Pipe Line Company and except that he admits that the defendant Columbia Oil & Gasoline Corporation will be in a position to foreclose on the Mortgage Trust Indenture in said paragraph referred to after December 31, 1936, if said "Offer" and "Plan" shall not have been consummated by said date.

22. He denies the allegations of Paragraph 32 of the petition.

[fol. 203] 23. He denies the allegations of Paragraph 33 of the petition and realleges and incorporates the foregoing answers hereinabove set forth to paragraphs of said petition numbered 2, 13, 14, 15, 16, 20, 22, 26, 28, 31 and 32 as though fully set forth herein.

24. He denies the allegations of Paragraph 34 of the petition.

Wherefore this defendant prays that said amended supplemental petition be dismissed and that he may go hence without day and recover his costs herein, and for such other and proper relief as is equitable.

(Sgd.) James M. Malloy, Solicitor for Defendant, Burt R. Bay. (Sgd.) Howard H. Swain, of Counsel.

January 28, 1936.

[fol. 204] IN UNITED STATES DISTRICT COURT

STIPULATION—Filed January 29, 1936

I

The petitioner asserts that the allegations contained in its amended and supplemental petition are true and that

the defendant Columbia Gas & Electric Corporation, through ownership by its affiliate Columbia Oil & Gasoline Corporation of various securities of Panhandle Eastern Pipe Line Company and otherwise, has interfered with, dominated and controlled the management and operation of said Panhandle Eastern Pipe Line Company with the purpose and effect of preventing competition, actual and potential, between said Panhandle Eastern Pipe Line Company and said Columbia Gas & Electric Corporation and of monopolizing and attempting to monopolize interstate trade and commerce in natural gas in certain sections of the United States in violation of the Antitrust laws of the United States.

II

The defendants maintain the truth of their answers in this cause and assert that they have not violated the Antitrust laws in fact or intent, but that they desire to avoid the expense and disturbance necessarily involved in continuing this litigation, and are willing that a consent decree in the form attached hereto and made a part hereof be entered herein, without conceding or admitting the truth [fol. 205] of the facts or matters alleged by the petitioner and without any findings of fact, provided that such consent on their part and the entry of said decree shall not constitute or be considered an admission and that the entry of such decree or the decree itself shall not be considered an adjudication that they have violated any law of the United States. The defendants agree, however, that nothing herein contained shall be considered as questioning the jurisdiction of this Court to enter this decree or to make the same valid and binding upon the defendants in all respects, and jurisdiction of the Court for this purpose is admitted by the defendants.

III

The petitioner and the defendants agree that provision against domination or control, direct or indirect, in the affairs of Panhandle Eastern Pipe Line Company by the defendant Columbia Gas & Electric Corporation and the maintenance of said Panhandle Eastern Pipe Line Company in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others constitutes the proper basis for the entry of the attached decree.

IV

As a partial means of carrying into effect the purposes of the attached decree, the defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation agree as promptly as possible to cause appropriate corporate action to be taken whereby (a) the present demand indebtedness of Columbia Oil & Gasoline Corporation to Columbia Gas & Electric Corporation shall be [fol. 206] partially liquidated; (b) the balance of said demand indebtedness shall be converted into obligations of Columbia Oil & Gasoline Corporation, maturing in not less than 15 years from the date thereof, which obligations so long as owned by Columbia Gas & Electric Corporation shall be subject to the pertinent provisions of the attached decree; (c) the present classes of preferred stock of Columbia Oil & Gasoline Corporation and the accrued dividends thereon shall be replaced by one class of preferred stock which, so long as owned by Columbia Gas & Electric Corporation, shall be entitled to elect not more than a minority of the Board of Directors of Columbia Oil & Gasoline Corporation; (d) the by-laws of Columbia Oil & Gasoline Corporation shall be amended to provide that no one other than the directors elected by the preferred stock as provided in clause (c) above shall be a director of Columbia Oil & Gasoline Corporation who is a director, officer or employee of Columbia Gas & Electric Corporation or of any of its subsidiaries, and that no one who is a director, or officer, or employee of Columbia Gas & Electric Corporation or of any of its subsidiaries shall be an officer of Columbia Oil & Gasoline Corporation; (e) the voting trust for the common stock of Columbia Oil & Gasoline Corporation shall be dissolved and certificates for such common stock shall be distributed to the present owners of voting trust certificates, and said common stockholders shall thereafter have the right of cumulative voting for the election of directors.

[fol. 207] V

(a) The defendant Columbia Oil & Gasoline Corporation agrees that it will forthwith carry into effect its Offer of Exchange, dated June 19, 1935, to Holders of Two-Year 6% Collateral Trust Notes of Panhandle Corporation which offer appears on pages 118 to 125, inclusive, of the amended

and supplemental petition herein and that as soon as said exchange has been accomplished it will cause appropriate corporate action to be taken whereby the entire issue of 6% promissory notes of Panhandle Eastern Pipe Line Company will be either cured of default or retired.

(b) The defendant Columbia Oil & Gasoline Corporation further agrees that Panhandle Eastern Pipe Line Company shall have not less than twenty days, after the taking of said action to cure said issue of its 6% promissory notes of default or their retirement, in which to make final binding commitments for the financing necessary to consummate its agreement with Detroit City Gas Company dated August 31, 1935.

(c) The defendant Columbia Oil agrees to make, within 48 hours of the entry of the attached decree, a bona fide offer in writing to the Receivers of Missouri-Kansas Pipe Line Company, appointed by the Delaware Chancery Court, providing among other things for the settlement of the claims of the Receivers asserted against the defendants herein and the acquisition by the Receivers of a direct interest in the stock of Panhandle Eastern Pipe Line Company, to the extent of one-half of the initial amount of com- [fol. 208] mon stock of Panhandle Eastern Pipe Line Company to be outstanding after a recapitalization thereof, subject to any right of preferred stock which may have voting rights and rights of conversion into common stock and also subject to other conditions of the offer which may alter the proportionate interest of the various parties in Panhandle Eastern Pipe Line Company.

VI

None of the provisions hereof shall be deemed to be conditions precedent to the entry of the attached decree, and in accordance with the foregoing provisions the consent decree in form hereto attached may be entered forthwith on the motion of any party hereto.

Dated this Twenty-ninth day of January, 1936.

United States of America, by (Sgd.) Carl McFarland, Acting Assistant Attorney General, (Sgd.) John J. Morris, Jr., United States Attorney, Columbia Gas & Electric Corporation,

George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., by Solicitors (Sgd.) Ward & Gray, (Sgd.) Cravath, deGersdorf, Swaine & Wood, of Counsel, Columbia Oil & Gasoline Corporation, Charles A. Munroe, by (Sgd.) Hugh M. Morris, (Sgd.) Ivan Culbertson, Solicitor, (Sgd.) Howard H. Swain, of Counsel, Burt R. Bay, by (Sgd.) James M. Malloy, Solicitor, (Sgd.) Howard H. [fol. 209] Swain, of Counsel, John H. Hillman, Jr., by (Sgd.) C. S. Layton, Solicitor.

(Form of consent decree annexed to foregoing stipulation, same as decree as entered and not repeated here. See page 210.)

[fol. 210] In United States District Court

Consent Decree—Filed January 29, 1936

This cause coming on to be heard this 29th day of January, 1936, and the several defendants having accepted service of process and having appeared and filed their answers to the Amended and Supplemental Petition herein, which latter has superseded the original Petition and is hereinafter referred to as the Petition;

And the petitioner and the defendants having filed a stipulation with the Clerk of the Court wherein and whereby they consent to the making and entering of this decree;

And it appearing that the petitioner alleges that the defendant Columbia Gas & Electric Corporation, through ownership by its affiliate Columbia Oil & Gasoline Corporation of various securities of Panhandle Eastern Pipe Line Company and otherwise, has interfered with, dominated and controlled the management and operation of said Panhandle Eastern Pipe Line Company with the purpose and effect of preventing competition, actual and potential, between said Panhandle Eastern Pipe Line Company and said Columbia Gas & Electric Corporation, and of monopolizing and attempting to monopolize interstate trade and commerce in natural gas in certain sections of the United States;

[fol. 211] And it further appearing from said stipulation that the petitioner and the defendants have agreed that

provision against domination or control, direct or indirect, in the affairs of Panhandle Eastern Pipe Line Company by the defendant Columbia Gas & Electric Corporation and the maintenance of said Panhandle Eastern Pipe Line Company in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others constitutes the proper basis for the entry of this decree;

Now, Therefore, without taking any testimony or evidence and in accordance with such stipulation, it is hereby

Ordered, Adjudged and Decreed as follows:

I

That the Court has jurisdiction of the subject matter hereof and of all the parties hereto, with full power and authority to enter this decree; and that the petition states a cause of action under the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

That the restrictions and injunctions herein shall apply not only with respect to the parties hereto and corporations mentioned herein but also to all persons, corporations, partnerships, associations or organizations acting, claiming or assuming to act for or on behalf of them or any of them; to [fol. 212] their successors or assigns and any and all partnerships, corporations or individuals who may directly or indirectly acquire the ownership or control of the property, business, or assets (except securities of Panhandle Eastern) of said parties whether by merger, consolidation, reorganization or otherwise; and to the taking of action prohibited herein by indirection or by or through subsidiaries, affiliates, officers, directors, shareholders, agents, receivers, trustees, attorneys, employees, or otherwise, individually or collectively;

That the defendant Columbia Gas & Electric Corporation, a Delaware corporation hereinafter referred to as "Columbia Gas", is a holding company owning more than 50 subsidiary companies; that a substantial part of the business of said enterprise is the production, transmission, distribution and sale of natural and artificial gas;

That the defendant Columbia Oil & Gasoline Corporation, hereinafter referred to as "Columbia Oil", is a corporation of the State of Delaware organized to hold and operate oil and gasoline properties formerly owned by Columbia Gas and has not been and is not now engaged in the business of producing, transmitting, distributing and selling natural gas except that it owns certain securities of said Panhandle Eastern Pipe Line Company and all of the outstanding capital stock and certain indebtedness of Indiana Gas Transmission Corporation;

That Panhandle Eastern Pipe Line Company, hereinafter referred to as "Panhandle Eastern", is a corporation of the State of Delaware, owns and controls large gas pro- [fol. 213] ducing areas in the Texas Panhandle and in Kansas and has constructed a natural gas pipe line from said producing areas through the States of Oklahoma, Kansas, Missouri, Illinois, and touching upon Indiana, for the purpose of transmitting, distributing and selling such natural gas;

That Panhandle Corporation is a corporation of the State of Maryland, and now owns stock and notes of Panhandle Eastern;

That the individual defendants named in the petition herein are citizens of the United States and have been either voting trustees of the common stock of Panhandle Eastern or officers or directors of said corporation, and with the exception of the defendants Burt R. Bay and John H. Hillman, Jr., have been officers or directors of Columbia Gas and Columbia Oil.

II

That the defendants be and they are hereby perpetually enjoined from exercising, or attempting, individually or collectively, directly or indirectly, to exercise any dominion or control over Panhandle Eastern and from restraining, or interfering in any manner with, the free and independent action of said Panhandle Eastern in the production, transportation, sale or delivery of natural gas to any person, corporation, community or section of the United States; from holding, acquiring, voting or in any manner acting as the owners, directly or indirectly, of the whole or any part of the stock, or other share capital, or bonds, property or assets of Panhandle Eastern or any other company, corporation, association or organization owning any

substantial amount of its securities; and from participating in any way, directly or indirectly, or from exercising any [fol. 214] control, direction, supervision, or influence, in the management or control of Panhandle Eastern; except

(a) That defendants may own stock in and obligations of Columbia Gas and Columbia Oil and be and exercise the lawful rights of directors or officers thereof;

(b) That defendants may own stock and obligations in Panhandle Corporation for, and pending, the dissolution of the latter corporation and the disposition of its interests in Panhandle Eastern as speedily as possible, in a manner not inconsistent with the provisions of this Section II and the purposes and further provisions of this decree; and defendant Hillman may continue to own 60,000 shares of stock he now holds in Missouri-Kansas Pipe Line Company so long as the voting rights appurtenant thereto are exercised independently of the other defendants herein and not in a manner inconsistent with the purposes and provisions of this decree;

(c) That Columbia Gas and defendant Hillman may own or acquire obligations, without present or potential voting rights, of said Panhandle Eastern, except that Columbia Gas is hereby enjoined and restrained in connection with enforcing any rights under said obligations with respect to principal, interest or sinking fund, from acquiring any of the pipe line or other physical assets of Panhandle Eastern;

(d) That Columbia Oil may own or acquire stock or obligations in Panhandle Eastern and exercise voting rights appurtenant thereto (and defendant Bay may be and exercise the lawful rights of an officer of Panhandle Eastern), subject to the further terms and provisions of this decree, [fol. 215] but Columbia Gas is hereby perpetually enjoined and restrained from acquiring any interest in such stock, by operation of law, or in connection with enforcing any lien created through the present or future existence of any debt, whether funded or unfunded, of Columbia Oil to Columbia Gas, or otherwise;

(e) That, when Columbia Gas has effectively divested itself of all control, direct or indirect, legal or practical, of Panhandle Eastern by no longer owning stock of any class

having present or potential voting rights in Columbia Oil, upon the approval of this Court Columbia Oil shall no longer be subject to the restrictive clauses of this Section II;

III

That Gano Dunn is hereby nominated, constituted and appointed trustee for the purposes and with the powers and duties set forth in this Section III;

That within 10 days after the entry of this decree Columbia Oil shall execute, and deposit with said trustee the agreements and offers executed by it in accordance with, its agreements set forth in Section V of the stipulation pursuant to which this decree is entered;

That within 10 days after the entry of this decree Columbia Oil shall transfer all of its stock now owned and thereafter all stock subsequently acquired in Panhandle Eastern, having present or potential voting rights, to said trustee [fol. 216] to hold the legal title to said stock and to exercise all the rights and privileges incidental to the absolute ownership thereof upon the following terms and conditions;

(a) To vote said stock for the election of as many directors of Panhandle Eastern as the number of shares thereof may be entitled to elect; Provided, that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recommended by the beneficial owner of said stock, in conference and with the advice of the trustee, but not including any of the individual defendants herein or any one (except with the approval of the trustee and this Court) who after January 1, 1931, has been or hereafter becomes an officer, director, agent or employee of Columbia Gas; and that, as to the directors so selected, the trustee is empowered to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree; subject, however, in this as well as in the exercise of all other powers to the authority of this court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder;

(b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree;

[fol. 217] (c) To deposit for safe-keeping the certificates for such stock with such bank or trust company as he may select and to issue, or arrange for the issuance, by such bank or trust company to the defendant Columbia Oil, of receipts for the stock so deposited in such form as the trustee may approve;

(d) To receive reasonable compensation, the amount thereof to be approved by this Court at not less than $15,000 per annum, for all services rendered by him as trustee, and to be reimbursed for any expenses incurred by him in the performance of his duties hereunder, upon quarterly accounts to this Court, which, when approved by the Court, shall be paid in equal shares by the defendants Columbia Gas and Columbia Oil;

(e) To pay over to Columbia Oil all dividends received upon said stock, except that dividends in the form of stock having present or potential voting rights shall be retained by the trustee subject to the same terms and conditions as the other shares held hereunder;

(f) To exercise all rights to subscribe to additional stock or other securities of Panhandle Eastern as Columbia Oil may direct;

(g) To report to this Court semi-annually; and to account for any action hereunder only in proceedings in this Court, any further order of this Court entered upon notice to such trustee and to the parties hereto shall be full protection to him for any action taken pursuant thereto, and the trustee shall not be personally responsible for mistakes in judgment or mistakes of law or fact in the execution of his duties hereunder but only for lack of good faith;

[fol. 218] That during the existence of the trust hereby created the trustee herein appointed shall be subject to removal by this court in its discretion; and in the event of such removal or in the event of the death, resignation or inability to act of such trustee, his successor shall be appointed by this Court upon recommendation of the parties hereto;

That the trust hereby created shall be and remain in full force and effect until terminated with the approval of this Court when (1) Columbia Gas has effectively divested itself of all control, direct or indirect, legal or practical, of Panhandle Eastern by (a) no longer owning stock of any class having present or potential voting rights in Columbia Oil or (b) by Columbia Oil divesting itself of ownership of all stock of Panhandle Eastern; or when (2), under the circumstances then existing, the continuation of said trust is no longer essential or necessary in carrying out the purposes of this decree; Provided, that no such stock of Panhandle Eastern shall be divested by transfer to any competitor of Panhandle Eastern or without prior notice and full disclosure of the facts to petitioner;

IV

That the defendants be and they are hereby perpetually enjoined from restraining or interfering in any manner in the freedom of Panhandle Eastern to contract or to finance or arrange the financing of all contracts, extensions (including the proposed new line to Detroit, whether or not [fol. 219] built and owned by it), repairs, maintenance, service, or improvements necessary in its business through or with any firm, person, or corporation with whom it may choose to deal (and to that end any such financial or contractual arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter);

That if such contracts be made with or financial assistance be secured from Columbia Gas, such contracts may be made or financial assistance furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment; and in the event that Columbia Gas shall, with respect to any contract or any contractual rights of any kind whatsoever or any property held as security or used in connection with any contract, in any way

prevent the free transportation, sale, and distribution of gas by Panhandle Eastern, then upon application to this Court or any court of competent jurisdiction Panhandle Eastern shall have the right (1) to the immediate appointment of a trustee to hold such contract rights or property subject to the purposes and provisions of this decree; (2) to immediate specific performance of any and all contracts with Columbia Gas; and (3) to immediate injunction, both [fol. 220] temporary and final, as well as any other appropriate remedy at law or in equity, including any remedy hereunder.

V

That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof.

Dated, Wilmington, Delaware, January 29th, 1936.
(Sgd.) John P. Nields, United States District Judge.

[fol. 221] IN UNITED STATES DISTRICT COURT

REPORT OF GANO DUNN, TRUSTEE UNDER THE DECREE HEREIN, FOR THE SEMI-ANNUAL PERIOD JANUARY 29, 1936, TO JULY 29, 1936

To the Honorable the Judge of the District Court of the United States for the District of Delaware:

Now comes Gano Dunn, Trustee heretofore appointed herein, and respectfully shows as follows:

First. That by decree entered herein on the 29th day of January, 1936, he was appointed a Trustee herein, for the purposes set forth in said decree, and that on the said date he undertook and assumed his duties as Trustee.

Second. That subdivision (g) of Section III of the said decree provides that the Trustee shall report to this Court semi-annually.

Third. Pursuant to said decree, the Trustee submits the following as his first semi-annual report for the period January 29th, 1936 to July 29th, 1936:

[fol. 222] Report

1. Powers and Duties of the Trustee

The powers and duties of the Trustee are set forth in Sections III and IV of the decree, copy of which is annexed, marked Exhibit A.

2. Transfer of Stock Ownership to Trustee

In accordance with Section III of the decree, all of the stock of Panhandle Eastern owned by Columbia Oil at the time of the entry of the decree and all of such stock acquired by it subsequently or received in exchange for existing holdings was transferred to the Trustee, and deposited by him for safekeeping with the Grace National Bank of New York, 7 Hanover Square, New York, N. Y. The amount of such stock of which the Trustee holds the legal title and is the owner of record is

404,326 shares of common stock
100,000 shares of Class A preferred stock,
and 10,000 shares of Class B preferred stock.

A copy of the receipts for this stock issued by the Grace National Bank to Columbia Oil in form approved by the Trustee, is annexed marked Exhibit B.

3. The Board of Directors

Section III (a) of the decree provides that the Trustee shall vote the stock standing in his name for the election of as many directors of Panhandle Eastern as the number of shares thereof shall be entitled to elect, the Trustee to be one of such directors and the remainder selected (with [fol. 223] certain exclusions) from among persons recommended by Columbia Oil, in conference and with the advice of the Trustee.

Pending the first meeting of stockholders for the election

of directors after the entry of the decree a board was promptly constituted consisting of:

William P. Phillips, James L. Harrop, Joseph A. Bower, Dean Mathey, Recommended by Columbia Oil.

Henry T. Bush, C. Ray Phillips, Receivers of Missouri-Kansas Pipe Line Co.

F. Cliffe Johnston, Ashton W. Hawkins, Recommended by the trustee.

Gano Dunn, Trustee.

The above board was re-elected at the stockholders meeting held March 9, 1936, by vote of Gano Dunn voting as stockholder of record of the stock held by him and also as proxy for the remaining stock.

On June 2, 1936, Mr. William P. Philips tendered his resignation as President and Director of the Company to take effect June 15, 1936, and at the meeting of the Board on June 2, 1936, Mr. Joe D. Creveling was elected President and Director to succeed him.

At all times the members of the Board of Directors have cooperated with the Trustee in every way to carry out the purposes of the decree.

4. Financing of Panhandle Eastern to Carry Out Its Contract With Detroit City Gas Company

On August 31, 1935 Panhandle Eastern entered into a favorable contract with Detroit City Gas Company to sell gas to the latter for distribution to consumers in the City of [fol. 224] Detroit, a copy of which is annexed as a part of Exhibit F hereinafter referred to. The carrying out of this contract depended upon the construction of a pipe line connecting the eastern terminus of Panhandle Eastern's existing pipe line with the City of Detroit and also the reinforcement of its existing line, and the contract provided that it should become void unless Panhandle Eastern should obtain a commitment for the financing of such construction on or before February 1st, 1936.

The decree provided in Section IV that any contractual or financial arrangements made by Panhandle Eastern to consummate the above contract with the Detroit City Gas Company should be subject to the approval of the Trustee who should receive and consider the advisability of alternative methods of financing from any responsible underwriters,

and if such financing should be secured from Columbia Gas it should be only upon the terms and conditions specified in the decree.

On January 31, 1936 Panhandle Eastern entered into an agreement for such financing with Columbia Gas and Columbia Oil subject to a provision that the agreement should cease to be effective if within twenty days Panhandle Eastern should be able to arrange for financing from other sources. This agreement was accepted by Detroit City Gas Company as sufficient compliance with the provisions of its contract that such financing should be contracted for on or before February 1st, 1936. A copy of the agreement of January 31, 1936 is annexed hereto, marked Exhibit C.

Financing from other sources not proving feasible and none having been offered, the Trustee on February 28th, 1936, approved the agreement of January 31st, 1936, subject to a modification thereof by which the time of stockholders other than Columbia Oil to subscribe for the issue [fol. 225] of stock therein provided for should be extended. Copies of such approval and of the modification agreed to are annexed hereto, marked Exhibits D and E.

The agreement of January 31st, 1936, provided for the making of a contract between Panhandle Eastern and Michigan Gas Transmission Corporation (a subsidiary of Columbia Gas) for the completion by the latter of its pipe line from the eastern terminus of Panhandle Eastern's line to Detroit and the transmission of gas from such eastern terminus to Detroit and the delivery thereof to Detroit City Gas Company in accordance with the Detroit contract.

This contract between Panhandle Eastern and Michigan Gas Transmission Corporation was made on March 17th, 1936 and was approved by the Trustee on that date. Copies of the contract and of the Trustee's approval are annexed marked Exhibits F and G.

On June 2, 1936, Panhandle Eastern made a Supplemental Contract with Detroit City Gas Company and a Supplemental Contract with Michigan Gas Transmission Corporation in relation thereto, for the purpose of causing the Detroit City Gas Company to develop more rapidly additional demands for gas in Detroit. Copies of these contracts are annexed marked Exhibits H and I.

In the contract with Michigan Gas Transmission Corporation dated March 17th, 1936, reservation of capacity was made to cover then existing commitments of Michigan Gas

Transmission not exceeding 2,250,000,000 cubic feet per year for the sale of gas for distribution to various communities in the State of Indiana. This gas was being furnished to Michigan by Panhandle Eastern as excess capacity gas under a letter contract, terminable on 90 days notice. On July 28, 1936, the directors of Panhandle Eastern authorized a contract with Michigan to sell such gas to the latter as firm gas for distribution in the communities designated [fol. 226] at the higher price received by Panhandle Eastern under the Detroit contract. A copy of the contract, executed as of July 31, 1936, is annexed marked Exhibit J.

5. Performance of the Detroit Contract

The contract with Detroit City Gas Company, dated August 31, 1935, provided that deliveries should begin not earlier than July 1st, 1936, and not later than September 1, 1936, but it was understood that every effort would be made to begin deliveries as soon after July 1st as possible. The work of pipe line construction and reinforcement was effectively expedited, and deliveries begun on July 9th, 1936.

Under the contract the buyer agreed to take not less than the following amounts of gas:

First year,	81,120,000 therms
Second year,	101,400,000 therms
Third year,	121,680,000 therms
Fourth year,	141,960,000 therms
Fifth and each year thereafter,	152,100,000 therms

It is now expected that the buyer will take the five year minimum amount well within five years.

6. Settlement Between Columbia Oil, Columbia Gas and Missouri-Kansas Pipe Line Company

The decree provided that within ten days after its entry Columbia Oil should deposit with the Trustee the offer of settlement provided for in Section V of the Stipulation upon which the decree was entered. The offer which was executed by Columbia Oil on January 31, 1936 and deposited with the Trustee was rejected by the Receivers of Mis- [fol. 227] souri-Kansas Pipe Line Company (hereinafter called Mo-Kan). A modified offer was subsequently accepted by the Receivers and was approved by the Court of

Chancery of the State of Delaware by order entered April 29, 1936, directing the Receivers to accept and carry out the offer of January 31, 1936, as supplemented and modified. The offer as modified is set forth in the minutes of the meeting of directors of Panhandle Eastern held May 19, 1936, a copy of which is annexed, marked Exhibit L.

For the purpose of carrying out the settlement, Columbia Oil, Columbia Gas and the Mo-Kan Receivers entered into an agreement dated June 1, 1936, a copy of which is annexed marked Exhibit K and Panhandle Eastern, Columbia Oil, and Columbia Gas and the Mo-Kan Receivers entered into an agreement, known as the four-party agreement, dated June 1, 1936, a copy of which is set forth in the minutes of the meeting of the directors of Panhandle Eastern held on May 19, 1936, a copy of which is annexed marked Exhibit L.

The four-party agreement, so far as it was to be presently performed, namely the exchange of releases, amendment of certificate of incorporation of Panhandle Eastern, amendment of sinking fund provisions of its mortgage, and the extension of time for its stockholders to subscribe to the issue of common stock of Panhandle Eastern not subscribed for and taken by Columbia Oil, was carried out on June 1, 1936.

7. Minutes of Meetings of Board of Directors

Annexed marked Exhibit L are copies of the minutes of all meetings of the Board of Directors of Panhandle Eastern during the six months period from the entry of the decree. These minutes are complete and detailed and show in full all the operations of the Company through its [fol. 228] Board of Directors during that period. (To avoid duplication copies of contracts already annexed to this report as exhibits have been omitted from the minutes to which they were also annexed.).

8. General

The Company is in excellent financial condition; its business is increasing, and its prospects for profitable operation are most favorable.

Dated 80 Broad Street, New York, August 11th, 1936.

Respectfully submitted, Gano Dunn, Trustee.

(Affidavit of Gano Dunn.)

[fol. 229] EXHIBIT "C" TO REPORT

Agreement made this 31st day of January, 1936, between Panhandle Eastern Pipe Line Company (hereinafter referred to as Eastern), a corporation of the State of Delaware, party of the first part, Columbia Gas & Electric Corporation (hereinafter referred to as Columbia Gas), a corporation of the State of Delaware, party of the second part, and Columbia Oil & Gasoline Corporation (hereinafter referred to as Columbia Oil), a corporation of the State of Delaware, party of the third part.

Eastern has entered into a contract, dated the 31st day of August, 1935, with Detroit City Gas Company, whereby Eastern has contracted to supply the natural gas requirements of Detroit City Gas Company, up to the maximum amount therein specified, for the period set forth in said contract. A copy of said contract (hereinafter referred to as the Detroit Contract) is attached hereto as Exhibit A.

Section 7 of Article II of the Detroit Contract provides that it shall not become effective unless Eastern shall be able to arrange on or before February 1, 1936 for the financing of the construction of a pipe line connecting the eastern terminus of Eastern's existing pipe line at a point in Vermilion County, Indiana, adjacent to the Illinois-Indiana state line with the place of delivery specified in the Detroit Contract, as well as the reinforcement of the present pipe line of Eastern, since the present pipe line of Eastern is inadequate to deliver the quantity of gas called for by the Detroit Contract. In reliance on the present contract, Eastern has notified Detroit City Gas Company that it has been able to so arrange. The new pipe line extension must be constructed and ready for the delivery of gas not earlier than July 1, 1936, and not later than September 1, 1936. [fol. 230] The amount required by Eastern to increase its present pipe line capacity and for working capital is estimated to be approximately $8,600,000, of which it is estimated that approximately $4,000,000 will be required in the spring of 1936, and the remainder at some subsequent date or dates.

Indiana Gas Transmission Corporation (hereinafter referred to as Indiana), a Delaware corporation, is a subsidiary of Columbia Oil and owns a natural gas transmission pipe line extending from the eastern terminus of Eastern's

existing pipe line across the State of Indiana to a connection with the pipe line of The Ohio Fuel Gas Company at King Measuring Station, near Muncie, Indiana.

Michigan Gas Transmission Corporation (hereinafter called Michigan), a Delaware corporation, is a subsidiary of Columbia Gas, organized for the purpose of constructing a pipe line extending from a point on Indiana's pipe line near Zionsville, Indiana, to the place of delivery specified in the Detroit Contract.

Now, Therefore, in consideration of the mutual covenants and agreements herein set forth, the parties hereto severally and not jointly, covenant and agree as follows:

1. Eastern agrees with the parties hereto as follows:

(a) That it will enter into a contract with Indiana for the delivery of gas through Indiana's pipe line to Michigan and will enter into a contract with Michigan for the delivery of gas by Michigan to Detroit City Gas Company, such contracts to contain such terms and provisions as shall insure the delivery to Detroit City Gas Company of natural gas in the quantities and upon the terms and conditions specified [fol. 231] in the Detroit Contract: or, in case Michigan shall acquire said line of Indiana extending from the Illinois-Indiana state line to Zionsville, will enter into a contract with Michigan providing for the delivery of said gas by Eastern to Michigan at the Illinois-Indiana state line, without the intervention of Indiana, the terms of such single contract to have substantially the same result to Eastern as the terms of the two contracts above referred to.

(b) That it will carry out all of the terms and provisions of said contracts or contract to the end that its obligations under the Detroit Contract may be fully performed.

(c) That it will apply the funds to be provided, as hereinafter stated, to increase the capacity of its existing main pipe line to the end that it shall be able to deliver to Indiana (or Michigan) at the Illinois-Indiana state line the quantities of natural gas at the times and at the pressure necessary to carry out the terms and provisions of its proposed contract with Indiana (or Michigan) referred to in Subdivision (a) of this Article I hereof.

(d) That it will offer pro rata to the holders of its Common Stock preemptive rights to subscribe to such number

of shares of its Common Stock, at such price per share as will yield not less than $4,000,000, payable on or before April 1, 1936; and that it will sell to Columbia Oil, at such subscription price, all of the shares of Common Stock so offered to its other stockholders which shall not be subscribed for by them or by their assignees.

2. Columbia Gas agrees with the parties hereto as follows:

[fol. 232] (a) That it will cause Michigan to enter into the proposed contract with Eastern referred to in Subdivision (a) of Article 1 hereof and will cause Michigan to carry out the terms and provisions thereof.

(b) That it will cause Michigan to construct a natural gas transmission pipe line from a point on Indiana's existing pipe line near Zionsville, Indiana, to the place of delivery specified in the Detroit Contract, said pipe line to be of a size, design and construction adequate to deliver at said place of delivery the maximum amount of natural gas called for by the Detroit Contract, and that it will furnish the funds necessary to enable Michigan to finance the construction of said pipe line.

(c) That, to provide the additional sum of $4,600,000 required by Eastern for the further increase of its pipe line capacity, Columbia Gas will purchase from Eastern 6% Bonds of Series A under the Mortgage Trust Indenture of Eastern at par or, if the restrictions of said Mortgage Trust Indenture do not at the time permit this, will purchase Second Mortgage 6% Bonds of Eastern at par, which shall be exchangeable at the option of Columbia Gas into such Bonds of Series A when the restrictions of said Mortgage Trust Indenture to permit such exchange can be met.

(d) That it will advance, on open account to Columbia Oil until funded by the agreement of the parties, the necessary funds required by Columbia Oil to carry out its obligations under this Agreement.

3. Columbia Oil agrees with the parties hereto as follows:

[fol. 233] (a) That, upon the issuance by Eastern of rights to subscribe for shares of Common Stock of Eastern, as provided in Subdivision (d) of Article 1 of this Agree-

ment, it will (1) immediately subscribe for its pro rata proportion of such shares, and (2) on April 2, 1936, will either (a) purchase such of the shares of Common Stock of Eastern so offered for subscription as shall not have been subscribed for by the stockholders of Eastern or their respective assignees or (b) if the time for the payment of such subscriptions shall have been extended by Eastern to a date later than April 1, 1936, advance to Eastern the amount that would be payable if all of the subscriptions to such shares of Common Stock which may be exercised later than April 1, 1936, had been exercised, the portion of such advance represented by the subscription rights later exercised to be repaid by Eastern, with interest at the rate of 6% per annum, upon the exercise of such subscription rights.

(b) That it will cause Indiana to enter into the proposed contract with Eastern referred to in Subdivision (a) of Article 1 hereof, and will cause Indiana to carry out the terms and provisions thereof (unless Eastern shall elect to contract solely with Michigan as herein provided).

(c) That it will cause Indiana to make any necessary additions to or reinforcements of its existing pipe line necessary to enable Indiana to transport through said pipe line the maximum quantities of gas called for by the requirements of the proposed contract between Eastern and Indiana referred to in Subdivision (a) of Article 1 hereof, and that it will provide Indiana with the funds necessary therefor.

[fol. 234] 4. All of the parties hereto severally agree with each other as follows:

(a) The parties hereto recognize the possibility that the corporate relationships between the parties hereto, Indiana and Michigan, may be changed, through the acquisition by Columbia Gas or by Michigan of the stock or pipe line of Indiana or by the merger of Indiana and Michigan, or by a combination of the foregoing, or otherwise. In any such case, this Agreement and the contracts referred to in Subdivision (a) of Article 1 hereof shall be appropriately amended, provided that such amendments shall be such as to preserve the following basic principles:

(1) That Columbia Gas and Columbia Oil shall be responsible for their respective obligations with respect to

the financing of the reinforcement of Eastern's existing pipe line as set forth in Subdivision (c) of Article 2 and in Subdivision (a) of Article 3 hereof;

(2) That Columbia Gas and Columbia Oil shall each be severally responsible for the financing of that portion, if any, of the pipe line from the Illinois-Indiana State line to the Place of Delivery specified in the Detroit Contract, which shall at the time in question be owned by their respective subsidiaries;

(3) That the operating contracts among the several pipe line companies (including Eastern) shall contain such terms and provisions as shall insure the delivery to Detroit City Gas Company of natural gas in the quantities and upon the terms and conditions specified in the Detroit Contract; and [fol. 235] (4) That such operating contracts shall be as favorable to Eastern as the forms of contract referred to in Subdivision (a) of Article 1 hereof.

(b) That if, for any reason not involving a breach of the Detroit Contract by Eastern, Indiana or Michigan, the Detroit Contract shall fail to be performed, all the obligations of the parties hereto then unperformed shall become void and shall be of no further force or effect whatsoever.

(c) That this Agreement is subject to the securing of such consents to the taking of the action described hereunder from Federal and State authorities as may be necessary.

5. Anything herein contained to the contrary notwithstanding, Eastern shall have the right provided for in clause (b) of Article V of the Stipulation accompanying the Decree of the United States District Court for the District of Delaware entered on January 29, 1936, in the cause entitled United States of America, Petitioner, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, and others, Defendants, being cause No. 1099 in Equity, which Stipulation was entered in the United States District Court for the District of Delaware contemporaneously with said Decree and is hereafter referred to as the Stipulation, to arrange for the financing of its undertakings under the Detroit Contract otherwise than through the assistance of Columbia Oil and Columbia Gas which they have agreed to furnish under their agreements herein. It is therefore agreed by all parties hereto that Eastern shall

have twenty days from the date of the curing of the default of its 6% Promissory Notes referred to in said clause of said Stipulation, or their retirement, in which to arrange for such financing from other sources. Eastern agrees that [fol. 236] it will forthwith take the appropriate action necessary for such curing of default or retirement of its Notes and that if, by the expiration of twenty days thereafter, it shall not have notified in writing Columbia Oil and Columbia Gas, by notice delivered to their respective New York City offices, that it has been able to arrange such financing from other sources, this Agreement shall be binding on Eastern and Columbia Oil and Columbia Gas according to its terms. Pending said period of twenty days, both Columbia Oil and Columbia Gas remain bound according to the terms hereof. In case Eastern shall be able to arrange said financing from other sources and shall so notify the other parties hereto, both Columbia Oil and Columbia Gas shall be freed of their obligations hereunder to provide such financing. Eastern agrees that it will submit any such alternative method of financing, before entering into it, to the Trustee appointed under said Decree for his approval and will not enter into it without his written approval.

In witness whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

Panhandle Eastern Pipe Line Company, by Jas. L. Harrop, Vice-President. (Corporate Seal.)

[fol. 237] Attest: Leith V. Watkins, Secretary. Columbia Gas & Electric Corporation, by E. Reynolds, Jr., Vice-President. (Corporate Seal.)

Attest: H. H. Pell, Jr., Secretary. Columbia Oil & Gasoline Corporation, by Charles A. Munroe, President. (Corporate Seal.)

Attest: W. A. Blind, Asst. Secretary.

[fol. 238] EXHIBIT "D" TO REPORT

February 28, 1936

Panhandle Eastern Pipe Line Company
31 Broadway
New York City

DEAR SIRS:

I hereby notify you that I have approved the financial and contractual arrangement made by you with Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation on January 31, 1936, as indicated in the enclosed letter from me to them dated February 28, 1936.

It is understood that my approval will also be required of the terms and conditions of the contract or contracts to be made by you (as provided in said agreement of January 31, 1936) with Indiana Gas Transmission Corporation and Michigan Gas Transmission Corporation, or either of them.

Yours very truly, (S.) Gano Dunn, Trustee under the Decree dated January 29, 1936, in Cause No. 1099 in Equity in the District Court of the United States for the District of Delaware.

Encl.

[fol. 239] EXHIBIT "E" TO REPORT

February 28, 1936

Columbia Oil and Gasoline Corporation
Columbia Gas and Electric Corporation

GENTLEMEN:

I am hereby indicating my approval of your contract of January 31, 1936, with Panhandle Eastern Pipe Line Company, provided you agree that in connection with paragraphs 1 (d) and 3 (a) of said contract, I, as Trustee, may cause the board of Panhandle Eastern to extend the time for exercising subscription rights to the half of the proposed issue of common stock not offered to Columbia Oil until the private claims of Missouri-Kansas against the Columbia companies have been settled (either by litigation or compromise) or until such other time and under such con-

ditions as I may determine to be proper in the interests of Panhandle Eastern and its shareholders, but in no event later than January 1st, 1937, and that such extension of the time for exercising subscription rights shall have the same effect as the extension in the time of payment provided for by paragraph 3 (a) of said contract: and provided also that during the same period I may cause said Board to offer the subscription rights to the half of such stock not offered to Columbia Oil to such other person or persons who as a result of such settlement or non-settlement shall then be [fol. 240] entitled thereto. This would mean that Columbia Oil, immediately upon the offer of the stock, would subscribe to one half of the issue of common stock and would under paragraph 3 (a), as hereby modified, advance the amount represented by the remainder of the stock-issue.

Yours very truly, (S.) Gano Dunn, Trustee.

The above is hereby accepted: Columbia Gas & Electric Corporation, By (S.) E. Reynolds, Jr. Exec. Vice-Pres. Columbia Oil & Gasoline Corporation, By (S.) Charles A. Munroe.

[fol. 241] EXHIBIT "F" TO REPORT

Gas Contract

Between

Panhandle Eastern Pipe Line Company

and

Michigan Gas Transmission Corporation

Dated March 17, 1936

Agreement made and entered into this 17th day of March, 1936, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware (hereinafter called Eastern), party of the first part, and Michigan Gas Transmission Corporation, a corporation of the State of Delaware (hereinafter called Michigan), party of the second part.

Eastern has entered into a contract, dated the 31st day of August, 1935, with Detroit City Gas Company, (here-

inafter called Detroit Company) whereby Eastern has contracted to supply the actual natural gas requirements of Detroit Company, up to the maximum amount therein specified, for the period and upon the terms and conditions set forth in said contract. A copy of said contract (hereinafter referred to as the Detroit Contract) is attached hereto as Exhibit A and made a part hereof.

Eastern represents that it owns, directly or through subsidiaries, natural gas production facilities and gas purchase contracts in the States of Texas and Kansas and a natural gas transmission pipe line extending from its production area to a point in Vermilion County, Indiana, adjacent to the Illinois-Indiana state line (hereinafter called [fol. 242] the Place of Delivery); and that it will be able to have available at the Place of Delivery sufficient quantities of natural gas to fulfill the actual requirements of the Detroit Contract.

Michigan represents that it owns (through merger with Indiana Gas Transmission Corporation) a gas transmission pipe line extending from the Place of Delivery hereunder to a point near Muncie, Indiana, and that it has under construction a new pipe line extending from a point on its existing pipe line near Zionsville, Indiana (hereinafter referred to as the Zionsville tap) to the place of delivery specified in the Detroit Contract.

Now, therefore, in consideration of the mutual covenants and agreements of the parties hereto as herein set forth, the parties hereto covenant and agree as follows:

Article I

Definitions

Except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used and shall be construed to have meanings as follows:

1. The "Effective Date" of this Agreement shall mean the first day of the calendar month immediately following the date when Detroit Company shall notify Michigan in writing of the completion of the necessary adjustments to all of its customers' appliances.

2. The "Date of Initial Delivery" shall mean the date on which Michigan shall notify Detroit Company and East-

ern of the completion of a connecting pipe line from the [fol. 243] Place of Delivery under this Agreement to the place of delivery specified in the Detroit Contract, and is ready to begin delivery of gas under the Detroit Contract, which date is to be not earlier than July 1, 1936, nor later than September 1, 1936.

3. The term "day", wherever used in this Agreement shall mean a period of twenty-four (24) consecutive hours beginning and ending at seven o'clock A. M. Standard Time or Daylight Saving Time, whichever shall be in effect at the Place of Delivery.

4. The term "month", wherever used in this Agreement, shall mean the period beginning at seven o'clock A. M. Standard Time or Daylight Saving Time, whichever shall be in effect at the Place of Delivery, on the first day of a calendar month and ending at seven o'clock A. M. Standard Time or Daylight Saving Time, whichever shall be in effect at the said place of delivery on the first day of the next succeeding calendar month.

5. The term "Special Industrial Customer" shall mean an industrial customer for whom specific agreement as to the sale of gas is made, pursuant to the provisions of Section 5 of Article II of the Detroit Contract.

6. Whenever by the terms of this Agreement Eastern is required to assign the Detroit contract to Michigan, Eastern shall only be required to do so if the consent of the Detroit Company is obtained thereto.

Article II

Scope of Agreement

1. Michigan will notify Eastern in writing when it receives notice from Detroit Company, pursuant to Section 1 of Article II of the Detroit Contract, that the adjustment of [fol. 244] all of Detroit Company's customers' appliances is completed.

2. Commencing with the Effective Date of this Agreement, and for the period provided in Article III hereof, Eastern agrees to deliver to Michigan, and Michigan agrees, to take, the amounts of natural gas necessary to supply the actual natural gas requirements of Detroit Company under

the Detroit Contract together with such additional amounts of natural gas as Michigan shall require for its own use in carrying out this Agreement such as pumping and heating and to provide for leakage, but not in excess of 94,000,000 cubic feet or 953,160 therms (whichever shall be greater), per day.

3. Michigan agrees, subject to the delivery by Eastern to Michigan of the necessary amount of natural gas, to deliver to Detroit Company, in accordance with the terms and provisions of the Detroit Contract, the quantities of natural gas which Detroit Company shall from time to time actually require and be entitled to receive under the Detroit Contract; provided that, as to any natural gas in excess of the amount specified in Section 2 of Article II of the Detroit Contract, the capacity of Michigan's pipe line and compressor station facilities shall be sufficient to carry such additional gas without interfering with its ability to supply the requirements of any present firm commitments of Michigan (not exceeding 2,250,000,000 cubic feet per year) and of any prior firm commitments hereinafter incurred of Michigan or Eastern which are supplied by gas furnished by Eastern and further provided that Michigan shall be entitled to retain, out of the payments made by Detroit Company for such additional natural gas, not less than the amount which [fol. 245] it would be entitled to retain if such additional natural gas were sold and accounted for on the same basis as the natural gas (other than gas delivered for ultimate resale to Special Industrial Customers) specified in Section 2 of this Article II.

Neither party shall, directly or through any affiliate, subsidiary or agent of either party, without the consent of the other, take any action which would entitle Detroit Company to reduce the price paid by it for gas under the provisions of Section 3 and Section 8 of Article II of the Detroit Contract. Nothing in this paragraph contained shall be effective if in violation of the Anti-Trust Laws of the United States or of any State.

4. If at any time in the future, while this Agreement remains in force, Eastern has additional natural gas which is available for ultimate distribution in the territory then reached by the pipe lines of Michigan, then (a) if Eastern has obtained a contract for the sale of such gas in such territory, Eastern shall have the right to require Michigan to

accept and Michigan will accept such gas from Eastern at the Place of Delivery specified herein and will deliver such gas, provided, that Michigan shall be entitled to retain, out of payments made by the purchaser of such additional gas, not less than the amount which it would be entitled to retain if such additional gas were sold and accounted for on the same basis as the gas (other than gas delivered for ultimate resale to Special Industrial Customers) specified in Section 2 of this Article II; or (b) if Michigan has obtained a contract for the sale of such gas in such territory, Michigan shall notify Eastern thereof and within fifteen days thereafter Eastern may by notice in writing require Michigan to assign and Michigan will assign such contract to it and East-
[fol. 246] ern shall then have the same rights with respect to such contract so assigned as are specified in subdivision (a) of this Section 4 or if Eastern does not elect to have such contract assigned to it, then (1) Michigan shall have the right to purchase such gas from Eastern for such resale, at a price calculated to yield Eastern the price set forth in Section 2 of Article VII hereof, and (2) Eastern shall have the right at any time when it may have such gas available on a firm basis (whether or not a supply of natural gas has been contracted for by Michigan elsewhere) to supply such gas to Michigan at a price (taking all factors into consideration) not less favorable to Michigan than the price at which such gas could otherwise be obtained by Michigan; provided, in any case, that the capacity of Michigan's pipe line and compressor station facilities shall be sufficient to carry such additional gas without interfering with its ability to supply the actual requirements of Detroit Company under the Detroit Contract and of any present firm commitments of Michigan (not exceeding 2,250,000,000 cubic feet per year) and of any prior firm commitments hereafter incurred of Michigan or Eastern which are supplied by gas furnished by Eastern. The whole of the foregoing Section 4 is subject to the right of Michigan to make other purchases not to exceed 500,000,000 cubic feet of natural gas per year from sources other than Eastern provided the capacity of Michigan's pipe line is sufficient to admit such gas without displacing from the line natural gas supplied by Eastern under prior firm commitments. Additional gas delivered pursuant to this Section 4, shall be delivered under a separate agreement or agreements which shall contain such provisions as the circumstances may require, provided that no such pro-

visions shall be more burdensome on either party than the corresponding provisions of this Agreement, without the [fol. 247] consent of such party. If in any case the parties are unable to agree upon the terms (other than those herein determined) of any such separate agreement, it shall be submitted to three persons, one selected by each party and the third by the other two, whose majority decision as to the terms to be agreed upon shall be binding upon the parties and the agreement, as drawn in conformity with such decision, shall be entered into by the parties accordingly. If for any reason either party should fail to select a person to serve as above provided, or if the two selected should fail to select the third, the selection of all three shall be made by the then Attorney General of the United States.

5. In the event that Detroit Company shall have a prospective Special Industrial Customer, and Michigan or Eastern shall desire that natural gas be sold to Detroit Company to serve such customer, the parties hereto will endeavor to negotiate a separate contract to cover the terms and conditions of the delivery of such gas by Eastern to Michigan and by Michigan to Detroit Company.

6. Except as otherwise provided in Sections 4 and 5 of this Article II, all gas delivered by Eastern to Michigan shall be governed by all the provisions of this Agreement.

7. Inasmuch as the carrying out of this Agreement depends upon the completion by Michigan of a pipe line connecting the Place of Delivery hereunder with the place of delivery specified in the Detroit Contract (including the reinforcement of its existing pipe line from the Place of Delivery hereunder to the Zionsville tap and the construction of a new pipe line from the Zionsville tap to the place of delivery specified in the Detroit Contract), as well as on the reinforcement by Eastern of its present pipe line, since the present line of Eastern is inadequate to deliver the [fol. 248] quantity of gas called for by this Agreement without reinforcements, Michigan agrees to construct and place said new pipe line in condition for operation on or before the Date of Initial Delivery and to have the necessary reinforcements, as required, made to its existing pipe line, and Eastern agrees to have the necessary reinforcements, as required, made to its pipe line, to enable both parties to comply with the requirements of this Agreement.

Nothing herein contained shall be deemed to require Michigan to increase its pipe line and compressor station facilities in order to carry Eastern's gas in addition to that specified in Section 2 of this Article II, unless, in each case, (a) Michigan receives from carrying such additional gas from Eastern at least as favorable revenue in relation to the additional investment required therefor as it derives hereunder in respect to gas delivered by Eastern pursuant to Section 2 of this Article II, or (b) if Michigan is unwilling to provide the necessary additional capital funds on that basis, Eastern may provide such capital funds and Michigan shall use such funds to make the necessary additions to its pipe line, in return for which Eastern shall be entitled to and shall be fully satisfied with the share of the revenue which Michigan would be entitled to receive under clause (a) of this sentence (after deducting therefrom Michigan's increased operating expenses and taxes caused by the addition to its pipe line and the additional gas transported therethrough) for the period of the firm contract pursuant to which such additional gas is sold.

8. In the event that Detroit Company shall give Michigan the notice and other data referred to in Section 8 of Article II of the Detroit Contract, Michigan shall promptly furnish copies thereof to Eastern; and if within four months after the receipt of such copies Eastern shall agree to reduce [fol. 249] the price at which gas delivered hereunder to Detroit Company is to be accounted for by Michigan to an amount bearing the same proportion to the price specified in this Agreement as the price named in such notice from Detroit Company shall bear to the price specified in the Detroit Contract, Eastern and Michigan shall modify the Detroit Contract as contemplated by said Section 8 of Article II thereof so that Detroit Company shall not become entitled to terminate said contract and this Agreement shall be deemed to be modified accordingly and as so modified shall continue in effect. In the event Eastern shall not so agree to reduce the price of gas delivered hereunder and if Michigan makes arrangements elsewhere within two months after the expiration of the aforementioned four months' period to obtain gas at a price equivalent (taking into consideration differences in distance of transmission and other pertinent factors) to the price which Eastern refused to meet and agrees with Detroit Company to modify

the Detroit Contract in accordance with the aforesaid notice, then Michigan may terminate this Agreement by giving (within one month after Michigan has made arrangements to obtain such gas elsewhere) eight months' written notice to Eastern and Eastern will upon demand of Michigan assign the Detroit Contract to Michigan.

Article III

Term of Agreement

Subject to the provisions of Section 8 of Article II and Sections 1 and 2 of Article XVII hereof, this Agreement shall continue in effect during the continuance of the Detroit Contract and shall terminate coincidentally therewith.

[fol. 250]

Article IV

Quality

1. Eastern agrees that the gas delivered by it to Michigan hereunder shall be such as to enable Michigan to deliver to Detroit Company gas complying in all respects with the requirements of the Detroit Contract and that Eastern will indemnify Michigan and hold it harmless from any loss or damage that may be incurred by Michigan due to the failure of said gas to comply with such requirements.

2. Subject to the performance by Eastern of its obligation under Section 1 of this Article IV, Michigan agrees that all gas delivered by Michigan to Detroit Company shall comply in all respects with the requirements of the Detroit Contract and that Michigan will indemnify Eastern and hold it harmless from any loss or damage that may be incurred by Eastern due to the failure of such gas to comply with such requirements.

Article V

Measurements

1. The unit of the gas deliverable under this Agreement shall be the therm, consisting of one hundred thousand (100,000) British thermal units.

2. The number of therms delivered shall be determined by multiplying the number of cubic feet of gas delivered, measured on the measurement basis hereinafter specified

and corrected to saturated conditions, by the gross heating value of such gas in British thermal units per cubic foot, and by dividing the product by one hundred thousand (100,000).

[fol. 251] 3. Measurements of volume and heat value of gas delivered by Eastern to Michigan hereunder shall be at the following points:

Volume

(1) The volume of gas so delivered shall be measured at the meter or meters of Eastern, which, together with any building and with all other collateral equipment required for the final determination of volume, Eastern agrees to install, maintain and operate at the Place of Delivery. Inasmuch as deliveries by Eastern to Michigan under contracts other than this Agreement are also made or to be made through the same meter or meters at said Place of Delivery, the parties hereto, prior to the commencement of deliveries hereunder, will agree on a practical method of apportioning the total gas delivered by Eastern to Michigan at said Place of Delivery among the several contracts between the parties; and to facilitate such apportionment, Michigan will install, maintain and operate check meters, at such points on Michigan's existing main pipe line and the lateral lines connected therewith as Eastern may request, which will provide data for a reasonably accurate apportionment of the gas delivered by Eastern to Michigan at said Place of Delivery among the several contracts, present and future, between the parties hereto, including this Agreement.

Heat Value

(2) The heat value of gas delivered by Eastern hereunder shall be determined by a calorimeter or calorimeters of Eastern which Eastern agrees to install, maintain and [fol. 252] operate at the Place of Delivery hereunder or at such other place as may be agreed on between the parties.

Provided, however, that the volume and heat value of gas delivered each day for ultimate resale to each of Detroit Company's Special Industrial Customers shall be determined as provided in Section 3 of Article V of the Detroit Contract.

4. The measurement of volume and heat value of gas delivered by Eastern to Michigan hereunder shall be made in the following manner:

Volume

(a) The unit of volume for the purpose of measurement and for the determination of gross heating value shall be one (1) cubic foot of gas saturated with moisture at thirty (30) inches of mercury pressure and at sixty (60) degrees Fahrenheit temperature.

(b) The average absolute atmospheric (barometric) pressure shall be assumed to be fourteen and four tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the Place of Delivery above sea level or variations in such barometric pressure from time to time.

(c) The temperature of the gas passing the meters shall be determined by the continuous use of a recording thermometer so installed that it may properly record the temperature of the gas flowing through the meters. The arithmetic average of the temperature recorded each twenty-four (24) hour day shall be used in computing measurements.

[fol. 253] (d) The specific gravity of the gas shall be determined monthly by a joint test as near the first of the month as practicable or as much oftener by a joint test as is found necessary in practice. The method of test shall be by Edwards Balance or by such other method as shall be agreed upon by the parties. The regular test at the first of the month shall determine the specific gravity to be used in computations for the measurement of gas deliveries until the end of such month or until changed by subsequent test; any special test to be applicable from the day made until changed by subsequent test. It is provided, however, that by agreement between the parties a suitable continuous method may be adopted.

(e) The relative humidity of the gas delivered hereunder shall be determined by approved methods at the beginning of delivery of gas to Michigan and thereafter monthly as near the first of the month as practicable or at such other times as is found necessary in practise.

(f) The deviation of the natural gas from Boyle's Law at the pressures under which said natural gas is delivered from Eastern to Michigan hereunder shall be determined at intervals of three months by a joint test or as much oftener as is found necessary in practice. The apparatus and the method to be used in making said tests shall be in accordance with the recommendations of the U. S. Bureau of Standards. Each test shall determine the correction to be used in computations for the measurement of natural gas deliveries until the next test; provided that, if in calculating volumes of gas delivered by Michigan to Detroit Company under the Detroit Contract Michigan does not [fol. 254] make any corrections for deviations from Boyle's Law, then the correction herein provided for shall be the difference between the correction corresponding to the pressure of the gas measured at the Point of Delivery specified herein and the correction corresponding to the pressure at which gas is measured at the Point of Delivery specified in the Detroit contract.

Heat Value

The gross heating value of the gas per cubic foot, as defined in Section 4 (a) above, shall be determined by taking the arithmetic average of the daily record of a recording calorimeter of a type to be mutually agreed upon, such recording calorimeter to be checked once each day, or at such other intervals as the parties may agree upon, by comparison with a manually operated calorimeter of a type approved by the U. S. Bureau of Standards and operated in accordance with methods recommended by the said Bureau. If upon any test any calorimeter shall be found to be not more than 2% in error, previous readings of such calorimeter shall be considered correct in computing the heat value of gas delivered by Eastern to Michigan. If upon any test any calorimeter shall be found to be in error by more than 2%, then any previous readings of such calorimeter shall be corrected to zero error for any period which is definitely known and/or agreed upon, but in case the period is not definitely known or agreed upon, such correction shall be for a period extending over one-half the time elapsed since the date of last calibration, not exceeding a correction period of four (4) days.

[fol. 255] 5. The measurement of volume and heat value of gas delivered by Michigan to Detroit Company shall be

made as provided in Article V of the Detroit Contract, and Michigan will at its own expense install, operate and maintain the measuring equipment (including check measuring equipment) called for by the Detroit Contract.

Article VI

Metering Equipment

1. Eastern shall permit a representative of Michigan to accompany the representative of Eastern on any inspection of the measuring and recording equipment of Detroit Company pertaining to sales to Special Industrial Customers, made pursuant to Section 1 of Article VI of the Detroit Contract.

2. Each party shall have the right to be present, at its election, at the time of any installing, reading, cleaning, changing, repairing, inspecting or adjusting done in connection with the other party's measuring equipment used in measuring deliveries hereunder and each party shall advise the other party of any intended major maintenance operation sufficiently in advance in order that the other party may conveniently have its representative present. The records from such measuring equipment shall remain the property of the party owning the meter, but, upon the request of either party, the party owning the meter will submit to the other party such records and charts together with calculations therefrom for the other party's inspection and verification, subject to return within ten days after receipt thereof.

[fol. 256] 3. The total capacity of the gas measuring equipment installed by Eastern shall be sufficient to permit the testing and withdrawal of any individual meter from service without restricting the delivery of gas or interrupting the measurement of gas. The installation, maintenance and operation of regulating equipment shall be such as not to affect the accuracy of the gas volume determination made from Eastern's meters. The meter or meters of Eastern shall be so located or protected as to assure freedom from pulsations, vibrations, or surges at the meter or meters from any cause in so far as such protection is obtainable within practicable limits mutually agreed upon to embody the best knowledge and information available.

4. Either party shall have the right to examine and approve, or object to, the plans of the other for the installation by it of such measuring equipment, and none of said installations shall be placed in service for the measurement of gas hereunder unless and until both parties are satisfied that such installation has been made in such manner as to permit of accurate determination of the quantity of gas to be delivered hereunder and to permit ready verification of the accuracy of measurement.

5. Michigan may install, maintain and operate such check measuring equipment as it shall desire, provided that such check meters and equipment shall be so installed as not to interfere with the operation of meters of Eastern. Eastern shall have access to such check measuring equipment at all reasonable hours but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by employees or agents of Michigan. Eastern shall have the right to be present, at its election, at the time of any installing, reading, cleaning, repairing, inspecting, calibrating or [fol. 257] adjusting done in connection with such check measuring equipment. Charts and records from said check measuring equipment, together with calculations therefrom, shall be available to Eastern for inspection and verification, subject to return within ten (10) days after receipt thereof.

6. If for any reason meters are out of service and/or out of repair so that the quantity of gas delivered is not correctly indicated by the reading thereof, the gas delivered through the period such meters are out of service and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of any check meter or meters if installed and accurately registering:

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation; or

(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

7. From time to time, and at least once each month, on a date as near the first of the month as practicable, the

accuracy of Eastern's measuring equipment at the Place of Delivery shall be verified, at Eastern's expense, in the presence of representatives of Eastern and Michigan, and the parties shall jointly observe any adjustments which are made in such measuring equipment. If at any time either party shall notify the other party that it desires a special test of any meter, the parties hereto shall cooperate to [fol. 258] secure an immediate verification of the accuracy of the measuring equipment and joint observation of any adjustments. Each party shall give to the other party notice of the time of all tests of meters sufficiently in advance of the holdings of the tests in order that the other party may conveniently have its representative present.

8. If upon any test any meter is found to be not more than two per cent (2%) fast or slow, previous readings of such meters shall be considered correct in computing the volume of gas delivered by Eastern to Michigan; but the meter shall at once be properly adjusted to record accurately. If upon any test any meter shall be found to be inaccurate by an amount exceeding two per cent (2%), then any previous readings of such meter shall be corrected to zero error for any period which is definitely known and/or agreed upon, but in case the period is not definitely known and/or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of last calibration, not exceeding a correction period of sixteen (16) days. If any test of any measuring equipment of either party shall be made at the request of the other party, with the result that such measuring equipment shall be found to register accurately or within two per cent (2%) of accuracy, the party requesting such test shall bear the expense of such test. The expense of all other tests shall be borne by the owner of such measuring equipment.

9. The meters of Eastern at the place of delivery shall be read at seven o'clock Standard Time (or Daylight Saving Time whichever shall be in effect), in the morning of each day of each calendar month, or as near to that time as practical operating conditions will permit.

[fol. 259] 10. Each party hereto shall preserve for a period of at least five (5) years all test data, charts and other records resulting from performance by it of the terms of this Agreement.

Article VII

Accounting and Computation of Statements

1. All gas delivered by Eastern to Michigan pursuant to the provisions of Sections 4 and 5 of Article II hereof shall be accounted for at the respective prices agreed upon between Eastern and Michigan for such gas.

2. Subject to the provisions of Sections 3, 4 and 5 of this Article VII, all gas delivered by Eastern to Michigan hereunder, other than gas delivered pursuant to the provisions of Sections 4 and 5 of Article II hereof, shall be accounted for by Michigan to Eastern as follows:

Demand Charge:

For each month, a sum equal to twenty-six cents (26c) multiplied by the maximum daily demand, as hereinafter defined. The term "maximum daily demand" shall mean by the greatest number of therms delivered on any one day during the immediately preceding winter period, consisting of the months of December, January, February and March, after deducting the sum of the demands of the Special Industrial Customers provided for herein on said day, except that the demand for each month prior to the expiration of the first winter period shall be billed on the actual [fol. 260] maximum daily demand established during the said month.

Commodity Charge:

If addition to the demand charge, the sum of one and four-tenths cents (1.4c) per therm for the total number of therms delivered by Eastern to Michigan hereunder during such month.

If the total quantity of therms taken by the Detroit Company in any one year is less than the minimum requirement provided in Section 4 of Article II of the Detroit Contract, then Michigan shall account for the therms representing such deficiency at the same average rate per therm as it has accounted for such gas as has actually been delivered to it in said year for the Detroit Contract.

3. All gas delivered between the Date of Initial Delivery and the Effective Date, shall be accounted for at a flat rate of two and four-tenths cents (2.4c) per therm.

4. If, at the end of any calendar year during the term of this Agreement, it shall be found that the provisions of Section 4 of Article VII of the Detroit Contract come into operation, then and in such case the amounts added to or deducted from the price paid by Detroit Company to Michigan for gas purchased under the Detroit Contract shall be apportioned between Michigan and Eastern hereunder in accordance with the changes in the costs of Michigan and Eastern, respectively, resulting in such increase or decrease and such apportionment shall be applied to the monthly payments by Michigan to Eastern hereunder. Each party agrees to cooperate with the other, to the fullest extent [fol. 261] possible, in respect to any action taken of desired to be taken in accordance with the provisions of said Section 4 of Article VII of the Detroit Contract.

5. If, pursuant to the provisions of Section 3 of Article II of the Detroit Contract, the price of gas under the Detroit Contract shall be reduced, then the price at which Michigan shall account to Eastern for gas delivered hereunder shall be reduced to an amount bearing the same proportion to the price specified in this Agreement as the decreased price under the Detroit Contract shall bear to the price specified therein.

6. Eastern agrees to reimburse Michigan for Eastern's share, amounting to $176,440, of the contribution to be made to Detroit Company pursuant to Section 5 of Article VII of the Detroit Contract, by way of twelve equal monthly credits against the monthly payments to be made by Michigan to Eastern pursuant to Article IX of this Agreement, during the first year immediately following the Effective Date.

Article VIII—Billing

1. On or before the seventh day of each month, Michigan shall render to Eastern a statement showing for the preceding calendar month the volume of natural gas delivered to each Special Industrial Customer.

2. Eastern shall, on or before the twelfth day of each calendar month, render or cause to be rendered to Michigan a statement showing the following:

[fol. 262] (1) The total number of therms delivered by Eastern to Michigan during the preceding calendar month;

with complete computation showing procedure by which determined;

(2) The number of therms delivered by Michigan, for resale to each Special Industrial Customer during the preceding calendar month, in accordance with its aforesaid statement;

(3) The total number of therms delivered by Eastern to Michigan other than for ultimate resale to Special Industrial Customers during the preceding calendar month, in accordance with its aforesaid statements (1) and (2);

(4) The maximum daily demand applicable to the period; and

(5) The payment then due from Michigan to Eastern determined as provided in this Agreement and in any other Agreements between the parties relating to deliveries of gas for ultimate resale to Special Industrial Customers.

3. Each party shall have the right to examine at reasonable times the books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions of this Agreement.

Article IX

Payments

1. Michigan shall render to Detroit Company each month the statement and charts called for by the provisions of Sec- [fol. 263] tion 2 of Article VIII of the Detroit Contract, showing the amount of natural gas delivered to Detroit Company during the preceding calendar month, and shall be entitled to receive from Detroit Company on behalf of Eastern and itself the monthly payments made pursuant to Article IX of the Detroit Contract. Michigan shall promptly deposit the payments so received in a special account in a bank to be approved by Eastern and, within three days after the receipt of each such monthly payment from Detroit Company (but not less than three days after the receipt from Eastern of the statement provided for in Section 2 of Article VIII of this Agreement), Michigan shall account and pay to Eastern (without offset, counterclaim or other diminution), out of the moneys so received, for the natural gas

delivered by Eastern to Michigan hereunder during the preceding calendar month, according to the measurements, computations and prices herein provided and set forth in Eastern's statement to Michigan for said month, excepting that in the event that at any time Michigan shall dispute the correctness of any statement so rendered, then payment shall be made by Michigan for such amounts as it concedes to be correct and such amount as may be in dispute shall be settled by agreement or by court action. Nothing herein contained shall obligate Michigan to make any payment hereunder except out of payments received from Detroit Company, and Michigan does not in any way guarantee that Detroit Company will make the payments called for by the Detroit Contract.

2. Should Michigan fail to pay the amount of any statement rendered by Eastern as herein provided, when such amount is due, interest thereon shall accrue at the rate of 6% per annum from the original due date until the date of payment. If such default in payment continues for twenty [fol. 264] days after payment was originally due, Eastern may, in addition to any other remedy it may have hereunder, revoke the authority of Michigan to receive further payments from Detroit Company and may direct Detroit Company to make future payments directly to Eastern until such amount is paid. Whenever Eastern shall, pursuant to the provisions of this paragraph, receive payments under the Detroit Contract directly from Detroit Company, Eastern shall be entitled to retain the whole of such payments until it shall have received all payments due to it from Michigan under this Agreement, with interest on overdue payments as hereinabove provided, and shall pay to Michigan any balance and shall regrant to Michigan the authority thereafter to receive payments from Detroit Company as herein provided.

Any interest received by Michigan or Eastern from Detroit Company shall be divided between the parties in the same proportion as is the principal to which such interest applies.

3. If presentation of a statement by Eastern is delayed after the twelfth day of the month, then the time of payment shall be extended correspondingly, unless the delay in the presentation of the statement is occasioned by the delay on the part of Michigan in furnishing a statement of the

amount of natural gas delivered to Special Industrial Customers.

4. If it shall be found at any time that an error has been made in the amount billed in any statement rendered by Eastern against Michigan hereunder, such error shall be adjusted and payment made, but without interest, within thirty (30) days of the determination thereof, provided that claim therefor shall have been made within sixty (60) days [fol. 265] from the date of discovery of any such error, but in any event within twelve (12) months from the date of such statement.

Article X

Operations by Eastern

1. Eastern agrees from time to time to make such alterations in its pipe line system as may be necessary to insure its adequate capacity for the delivery of gas to Michigan in accordance with the requirements of this Agreement, but not to exceed a maximum amount of 94,000,000 cubic feet of gas per day or 953,160 therms, whichever shall be greater.

2. Eastern agrees to comply in all respects with Section 2 of Article X of the Detroit Contract but Michigan shall have no rights under this Section 2 unless Detroit Company shall lawfully terminate the Detroit Contract on account of the breach of such Section by Eastern.

3. Inasmuch as all or part of the gas delivered by Eastern to Michigan hereunder is to be sold to Detroit Company, which is a public utility company operating in the metropolitan area of Detroit, and, inasmuch as one of Detroit Company's most important obligations is to supply the City of Detroit and its environs with gas, Eastern agrees to operate its pipe line in such manner as to assure, as nearly as is reasonably possible, continuous supply of gas in the quantity and of the quality actually required for distribution and consumption under this Agreement and the Detroit Contract.

[fol. 266]

Article XI

Michigan's Facilities

1. Michigan agrees to proceed promptly with the construction of the pipe line connecting the Zionsville tap with

the place of delivery specified in the Detroit Contract and to make, from time to time as required, any necessary reinforcements to its existing pipe line.

2. Michigan agrees to give Eastern notice at all times, as far in advance as operating conditions will permit, of the estimated daily, monthly and annual quantities of natural gas actually required hereunder and the anticipated peak hourly demands. Michigan may base such estimates on information received from Detroit Company, but shall not be bound by the quantities thereof.

3. Inasmuch as all or part of the gas delivered by Eastern to Michigan hereunder is to be sold to Detroit Company, which is a public utility company operating in the metropolitan area of Detroit, and, inasmuch as one of Detroit Company's most important obligations is to supply the City of Detroit and its environs with gas, Michigan agrees, subject to the performance by Eastern of its covenant contained in Section 3 of Article X hereof, to operate its pipe line in such manner as to assure, as nearly as is reasonably possible, continuous supply to Detroit Company of gas in the quantity and of the quality required by the Detroit Contract.

[fol. 267]

Article XII

Place and Point of Delivery

The Place of Delivery for all gas to be delivered by Eastern to Michigan hereunder shall be at Eastern's measuring station at the eastern terminus of Eastern's main pipe line at a point in Vermilion County, Indiana, adjacent to the Illinois-Indiana state line. The Point of Delivery shall be the eastern edge of the plot of ground on which said measuring station is situated, at the connection between the pipe lines of the respective parties hereto, unless Michigan shall install check measuring equipment on the same plot, in which case the Point of Delivery shall be the intake of Michigan's check measuring equipment.

Article XIII

Possession of Gas

1. As between the parties hereto, Eastern shall be in control and possession of the gas deliverable hereunder and

responsible for any damage or injury caused thereby until the same shall have been delivered to Michigan at the Point of Delivery, after which Michigan shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

2. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the maintenance or operation of the property and/or equipment of the indemnifying party, the Point of Delivery of the gas as hereinbefore specified to be the point of division of responsibility between the parties.

[fol. 268] Article XIV.

Pressure

Eastern agrees to deliver or cause to be delivered gas hereunder at such pressures as Michigan may require, up to but not exceeding 225 pounds to the square inch gauge pressure, at the Point of Delivery. Eastern agrees that it will use due care and diligence to furnish gas to Michigan at a uniform pressure.

Article XV

Force Majeure

Neither party shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

2. Such causes or contingencies affecting the performance of this Agreement by either party, however, shall not relieve it of liability in the event of its concurring negli-

gence or in the event of its failure to use due diligence to [fol. 269] remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this Agreement relieve either party from its obligations to make payments of amounts then due hereunder; nor shall such causes or contingencies relieve either party of liability unless such party shall give notice and full particulars of the same in writing or by telegraph to the other party and to Detroit Company as soon as possible after the occurrence relied on.

Article XVI

Warranty of Title to Gas

1. Eastern agrees that it will and hereby does warrant generally the title to all gas delivered under this Agreement and the right to sell the same and that such gas shall be free and clear from all liens and adverse claims and that it will indemnify Michigan and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas and/or to royalties, taxes, license fees or charges thereon, which are applicable before the possession of the gas passes to Michigan or which may be levied and assessed upon the delivery thereof to Michigan. In the event any adverse claim of any character whatsoever is asserted in respect of any of said gas, Michigan may withhold payments under this Agreement up to the amount of such claim without interest until such claim has been finally determined, as security for the performance of Eastern's obligations with respect to such claim under this Section, or until Eastern shall have furnished bond to Michigan, in an amount and with sureties satisfactory to Michigan, condi- [fol. 270] tioned for the protection of Michigan with respect to such claim.

2. Michigan agrees that, in the event that gas acquired by Michigan from any source other than Eastern shall be commingled in Michigan's pipe line with gas delivered by Eastern to Michigan hereunder and shall so be delivered to Detroit Company, it will and hereby does warrant generally the title to all such gas from other sources so delivered to Detroit Company and the right to sell the same and

that such gas from other sources shall be free and clear from all liens and adverse claims and that it will indemnify Eastern and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses (including all costs and expenses arising out of Eastern's warranty of title to gas delivered under the Detroit Contract) arising from or out of adverse claims of any or all persons to said gas and/or to royalties, taxes, license fees or charges thereon which are applicable before the possession of such gas passes to Detroit Company or which may be levied or assessed upon delivery thereof to Detroit Company.

Article XVII

Remedies

1. In the event that Detroit Company terminates the Detroit Contract for any of the causes specified therein, then this Agreement shall be automatically terminated as of the same date on which the Detroit Contract shall be terminated, without prejudice to the right of Eastern to collect any amounts then due it in respect of gas delivered prior to the effective date of the termination, subject to any proper counterclaims or set-offs of Michigan, and without [fol. 271] waiver of any remedy to which the party not in default may be entitled for violation of this Agreement. Such termination of this Agreement shall not in any way affect any contracts entered into between the parties hereto pursuant to Section 4 of Article II hereof.

2. In the event that Michigan shall fail to pay any statement rendered it by Eastern for gas delivered under this Agreement within sixty (60) days after the same became originally due, Eastern may, in addition to all other remedies which it may have at law in addition to those provided herein, at any time thereafter by written notice to Michigan, cancel and terminate this Agreement, to be effective six (6) months from the delivery of such notice, provided that this remedy shall not be available or effective in case of default in the payment of disputed statements as elsewhere provided herein.

3. The remedies herein specifically provided for are cumulative, and in addition to all rights and remedies for specific performance or for damages, including loss of re-

turn and profits, or otherwise, which either party may have at law or in equity for breach by the other party of any agreement, condition or covenant contained herein, which rights and remedies neither Michigan nor Eastern shall in anywise be deemed to have waived either by the expressed provisions for the foregoing remedies or by the exercise of any thereof; provided, however, that in the event that this Agreement be cancelled or terminated by reason of the provisions of Section 1 of Article XV hereof, there shall be no liability upon the part of either party to the other, excepting such liability as remains unsettled between the parties arising from the delivery of gas and such transactions as were had and completed between the parties prior to cancellation.

[fol. 272] 4. If Eastern shall at any time fail to deliver or cause to be delivered gas in volumes and/or at such pressures as Michigan may be entitled to require up to the limits otherwise herein provided, Eastern shall, unless relieved by the terms of Article XV hereof, reimburse and indemnify Michigan for any expenses, loss or damage which it may sustain by reason of such failure, including any loss or damage caused by the necessity of obtaining gas elsewhere to remedy such deficiency.

Article XVIII

Miscellaneous

There shall be no modification of the terms and provisions hereof except by the execution of supplementary written contracts.

2. No waiver by either party of any one or more defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

3. Any company which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of Eastern or Michigan, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement; but otherwise neither party shall assign this Agreement or any

of its rights hereunder unless it shall first have obtained the consent thereto of the other party.

4. Any notice, request, demand, statement or bill provided for in this Agreement shall be in writing and shall be duly [fol. 273] delivered when mailed by registered mail to the Post Office address of either of the parties hereto, as the case may be, as follows:

Eastern: Panhandle Eastern Pipe Line Company, 101 West 11th Street, Kansas City, Mo.

Michigan: Michigan Gas Transmission Corporation, 116 East Wayne Street, Fort Wayne, Ind.

or at such other address as either party shall designate for the purpose; except that routine communications (including monthly statements and payments) shall be duly delivered when mailed by either registered or ordinary mail.

5. Promptly after the execution of this Agreement Eastern shall notify Detroit Company of the execution hereof and shall request Detroit Company to deliver all notices, statements and other communications and to make all payments under the Detroit Contract directly to Michigan. Each of the parties hereto agrees that, upon the receipt from Detroit Company of any communication affecting the Detroit Contract or this Agreement (other than routine communications not affecting the other party), it will immediately deliver a copy of such communication to the other party.

In witness whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by [fol. 274] their respective Secretaries or Assistant Secretaries, the day and year first above written.

Panhandle Eastern Pipe Line Company, by James L. Harrop, Vice-President. (Corporate Seal.) Attest: Leith V. Watkins, Secretary.

Michigan Gas Transmission Corporation, by Walter C. Beckjord, President. (Corporate Seal.) Attest: H. H. Pell, Jr., Secretary.

[fol. 275] EXHIBIT A

Gas Contract between Panhandle Eastern Pipe Line Company and Detroit City Gas Company, Dated August 31, 1935

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[fol. 282]

Gas Contract

Panhandle Eastern Pipe Line Company

and

Detroit City Gas Company

Agreement made and entered into this 31st day of August, 1935, by and between Panhandle Eas rn Pipe Line Company, a corporation of the State of Delaware (hereinafter called Seller), party of the first part, and Detroit City Gas Company, a corporation of the State of Michigan (hereinafter called Buyer), party of the second part.

Buyer represents that it owns and operates a gas distribution system in and adjacent to the City of Detroit, Michigan through which it is engaged in the distribution of gas to the public, and that it desires to obtain a supply of natural gas.

Seller represents that it owns, directly or through subsidiaries, natural gas production facilities and gas purchase contracts in the States of Texas and Kansas and a natural gas transmission pipe line extending from its production area to a point on the Illinois-Indiana state line; that subject to the provisions hereof it will be able to have available at said eastern terminus of its pipe line at the Illinois-Indiana state line, sufficient quantities of natural gas to fulfill the requirements of this Agreement; and that, likewise subject, it contemplates constructing or arranging for the construction of a pipe line to connect the eastern terminus of its pipe line with Buyer's distribution system at or near the City of Detroit.

[fol. 283] 2

Now, therefore, in consideration of the mutual covenants and agreements of the parties hereto as herein set forth, the parties hereto covenant and agree as follows:

Article I

Definitions

Except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used and shall be construed to have meanings as follows:

1. The "Effective Date" of this Agreement shall mean the first day of the calendar month immediately following the date when Buyer shall notify Seller in writing of the completion of the necessary adjustments to all of its customers appliances.

2. The "Date of Initial Delivery" shall mean the date on which Seller shall notify Buyer of the completion of a connecting pipe line from the eastern terminus of its existing pipe line at the Illinois-Indiana state line to the Buyer's River Rouge plant, and is ready to begin delivery of gas under this contract, which Seller agrees shall not be earlier than July 1, 1936, nor later than September 1, 1936.

3. The term "day", wherever used in this Agreement, shall mean a period of twenty-four (24) consecutive hours beginning and ending at seven o'clock A. M. Standard Time

or Daylight Saving Time, whichever shall be in effect at the place of delivery.

4. The term "month", wherever used in this Agreement, shall mean the period beginning at seven o'clock A. M. [fol. 284] Standard Time or Daylight Saving Time, which-

3

ever shall be in effect at the place of delivery, on the first day of a calendar month and ending at seven o'clock A. M. Standard Time or Daylight Saving Time, whichever shall be in effect at the said place of delivery on the first day of the next succeeding calendar month.

5. The term "Special Industrial Customer" shall mean an industrial customer for the gas supply for whom Seller and Buyer make specific agreement outside of that provided for in Article VII, Section 2 hereof.

Article II

Scope of Agreement

1. Commencing with the Date of Initial Delivery, Buyer will proceed with due diligence to make necessary adjustments of all of its customers appliances and will complete them within six months. Buyer will notify Seller in writing when the adjustment of all of its customers appliances is completed.

2. Commencing with the Effective Date of this Agreement, and for the period provided in Article III hereof, Seller agrees to sell and deliver to Buyer, and Buyer agrees to buy from Seller, all of the natural gas requirements of Buyer for distribution and sale to any and all of its present and future customers and for its own use, but not in excess of ninety million cubic feet or its equivalent, nine hundred and twelve thousand six hundred therms, per day which represents all of the gas Seller now believes it can safely contract to furnish Buyer at this time.

[fol. 285] 4

3. In consideration of the covenant in the last preceding paragraph, Seller agrees that if at any time in the future, while this Agreement remains in force, Seller, its assignee,

or any successor corporation carrying out the terms of this Agreement, has additional gas which it desires to distribute in the territory served by Buyer, Buyer shall, for the balance of the period during which this Agreement shall remain in force, have the right to purchase such gas in such amount as it is willing to take under a firm commitment and at such price and under such terms and conditions as Seller could otherwise obtain for such gas.

The Seller further agrees that if, during the period that this Agreement shall remain in force, it should sell and deliver natural gas at a price less than that charged Buyer under this Agreement to another or others than Buyer for use or resale within the territory now served by Buyer with gas purchased hereunder, it will simultaneously reduce the contract price to Buyer hereunder to the lowest price obtained by it for gas sold to such party or parties. If conditions of sale be different, the amounts being substantial, Seller shall grant Buyer the right to change this Agreement to conform to such conditions in order to obtain such lower price.

4. Seller shall not be required to supply hereunder more than 90 million cubic feet or its equivalent nine hundred and twelve thousand six hundred therms of natural gas in any one day. Buyer agrees to take and pay for not less than the following annual amounts of natural gas, commencing with the Effective Date hereof:

[fol. 286] 5.

First Year	81,120,000 therms
Second Year	101,400,000 therms
Third Year	121,680,000 therms
Fourth Year	141,960,000 therms
Fifth Year and each year thereafter	152,100,000 therms

Buyer agrees that it will not take on its maximum day more than twice the number of therms which it takes on the average day of the twelve month period to which said maximum day applies in the computation of demand charge. The term "maximum day" is understood to be that day during either December, January, February or March of the said twelve months period upon which the greatest number of therms has been taken.

5. In the event that Buyer shall have a prospective Special Industrial Customer and shall desire to purchase natural gas to serve such customer, the parties hereto will endeavor to negotiate a separate contract to cover the price at which Seller will furnish such gas to Buyer. Each such separate contract shall depend upon Seller's having available a sufficient supply of natural gas and shall include a provision for the temporary curtailment or discontinuance of service thereunder in the event of an insufficiency of Seller's supply for other deliveries under this Agreement.

It is agreed that if Seller shall refuse to furnish Buyer up to 20,800,000 therms of gas per year to serve such Special Industrial Customers at a price not less than the commodity charge specified in Article VII, Section 2, then Buyer's obligation to take the minimum quantities specified in the next preceding Section of this Agreement shall be reduced by such quantities as Seller shall fail to supply Buyer for such industrial customers, but not to exceed 20,800,000 therms per year.

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6. Except as otherwise provided in Section 5 of this Article II, all gas sold by Seller to Buyer shall be governed by all the provisions of this Agreement.

7. Inasmuch as the carrying out of this Agreement depends upon the construction of a pipe line connecting the eastern terminus of Seller's existing pipe line at the Illinois-Indiana state line with the city of Detroit, as well as on the reinforcement of the present pipe line of Seller, since the present line of Seller is inadequate to deliver the quantity of gas called for by this Agreement without reinforcements requiring the expenditure of a large sum of money, and Seller represents that its financial position is such that it cannot construct either said connecting line or said reinforcements without outside financing, it is expressly understood and agreed that, unless the construction of such connecting line shall have been financed on or before February 1, 1936, and unless a contract shall be entered into providing for the financing of said reinforcement of Seller's present pipe line before said date, this Agreement shall be null and void and no obligations hereunder shall exist on the part of either party hereto. Seller agrees to use its best efforts to arrange for financing the construction of

such connecting pipe line and such reinforcement of its present pipe line, but does not undertake any firm commitment to do so. If such financing shall be arranged by said date, Seller will construct and place said connecting pipe line in condition for operation on or before the Date of Initial Delivery.

Recognizing the desire of Buyer to obtain a supply of natural gas at the earliest possible moment, as well as the importance thereof to Buyer, Seller agrees that as soon

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as it becomes apparent to it that it will be unable to finance the construction of the connecting pipe line or construct the same, or that a contract cannot be made for financing the reinforcement of Seller's pipe line, whereby this Agreement would become null and void, it will give to Buyer written notice of such facts and a release of Buyer from any liability hereunder leaving Buyer then free to obtain or contract for a supply elsewhere.

8. In the event that an adequate supply of natural gas sufficient to meet all of Buyer's requirements for the unexpired term of this Agreement is developed by responsible parties other than Seller and is made available to Buyer in its served territory by the actual construction of a pipe line thereto, or in the event that such a supply is similarly made available to a competitor serving and distributing gas in such territory at a schedule of rates which applied to the deliveries of gas to Buyer hereunder during the preceding twelve months would result in a lower amount than under the rates provided for by this Agreement, then and in that event Buyer may give notice to Seller of such available gas and with such notice shall furnish to Seller the rate schedules aforesaid, together with other data and particulars pertinent under this Article, and Seller shall have six months after date of receipt of such notice and rate schedules, data and particulars, within which to meet such lower obtainable price of gas, and in the event of the failure of Seller to agree to modify this Agreement accordingly within said six months period Buyer shall have the option to terminate this Agreement at any time within twelve months after expiration of said six months period upon six months written notice to Seller.

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Article III

Term of Agreement

The term of this Agreement shall be for a period of fifteen (15) years beginning with the Effective Date and from year to year thereafter, after the expiration of said fifteen (15) year period, until cancelled on eighteen (18) months' notice in writing given by either party to the other.

Article IV

Quality

1. Seller agrees that the gas delivered hereunder shall be natural gas (a) except that said natural gas shall at all times comply with the requirements as to purity expressed in this Agreement; (b) that Seller may extract or permit the extraction of moisture, helium, natural gasoline, butane, propane, and/or other hydro-carbons (excepting methane) from said natural gas, or may enrich said natural gas to the extent required to meet the gross heating value requirements hereof before delivery thereof to Buyer; and (c) that Seller may subject or permit the subjection of the gas to compression, cooling, cleaning and other processes to such an extent as may be required in its transmission from the wells to the point or points of delivery.

The gas delivered hereunder is assumed but not guaranteed to have a gross heating value of 1014 British

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thermal units per cubic foot. In no event shall the gross heating value of the gas delivered hereunder fall below 950 British thermal units per cubic foot nor exceed 1100 British thermal units per cubic foot, and the variation in gross heating value shall not be more than 100 British thermal units per cubic foot in any six months period.

2. Seller agrees that the gas delivered hereunder

(a) shall be commercially free from solid and/or liquid matter, dust, gums and/or gum forming constitutents;

(b) shall not contain more than one (1) grain of hydrogen sulphide per one hundred (100) cubic feet and that this

purity requirement shall be determined by quantitative test after presence of H2S has been indicated by qualitative test which shall consist of exposing a strip of white filter paper recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water, to be exposed to the gas for one and one-half minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five cubic feet per hour, the gas not impinging from a jet upon the test paper, and after this exposure the test paper is found not distinctly darker than a second paper freshly moistened with a solution not exposed to the gas;

(c) shall not contain more than twenty (20) grains of total sulphur per hundred (100) cubic feet;

(d) shall not contain an amount of moisture at any time exceeding that corresponding to saturation at the temperature and pressure of the gas in the main pipe line at a point approximately fifty (50) feet in advance

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of Seller's meter inlet header, and that the water shall not be present in liquid phase;

provided, that if Buyer or any purchaser from Buyer shall at any time be required by a duly constituted public regulatory authority to deliver to its customers gas containing less hydrogen sulphide and/or less total sulphur than above specified, Seller shall upon reasonable notice from Buyer cause the gas delivered hereunder to conform to such new requirement at Seller's expense.

3. Seller agrees that if the gas offered for delivery by it hereunder shall fail at any time to conform to any of the specifications hereinabove set forth, then Buyer may at its option refuse to accept delivery of or accept delivery of such gas and itself make changes necessary to bring such gas into conformity with such specifications, and Seller shall reimburse Buyer for any reasonable expense incurred by Buyer in effecting such changes, or for any reasonable expense otherwise incurred by Buyer by reason of the failure of the gas to conform to such specifications.

Article V

Measurements

1. The sales unit of the gas deliverable under this Agreement shall be the therm, consisting of one hundred thousand (100,000) British thermal units.

2. The number of therms delivered shall be determined by multiplying the number of cubic feet of gas delivered, measured on the measurement basis hereinafter specified and corrected to saturated conditions, by the gross heating value of such gas in British thermal units per cubic foot,

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and by dividing the product by one hundred thousand (100,000).

3. Measurements of volume and heat value of gas hereunder shall be at the following points:

Volume

(1) The volume of gas delivered by Seller hereunder shall be measured at the meter or meters of Seller, which, together with building and with all other collateral equipment required for the final determination of volume, Seller agrees to install and maintain and which will be operated by Seller at the Place of Delivery.

Heat Value

(2) The heat value of gas delivered by Seller hereunder shall be determined by a calorimeter or calorimeters of Seller which Seller agrees to install and maintain and which shall be operated by Seller at the Place of Delivery.

Provided, however, that Buyer shall install and operate at its own expense, meters to determine the volume of gas delivered each day to each of Buyer's Special Industrial Customers, the measurements to be corrected to the measurement basis specified in Section 4 (a) of this Article V.

4. The measurement of volume and heat value of gas hereunder shall be made in the following manner:

Volume

(a) The unit of volume for the purpose of measurement and for the determination of gross heating value shall be one (1) cubic foot of gas saturated with moisture at thirty

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(30) inches of mercury pressure and at sixty (60) degrees Fahrenheit temperature.

(b) The average absolute atmospheric (barometric) pressure shall be assumed to be fourteen and four tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the Place of Delivery above sea level or variations in such barometric pressure from time to time.

(c) The temperature of the gas passing the meters shall be determined by the continuous use of a recording thermometer so installed that it may properly record the temperature of the gas flowing though the meters. The arithmetic average of the temperature recorded each twenty-four (24) hour day shall be used in computing measurements.

(d) The specific gravity of the gas shall be determined monthly by a joint test as near the first of the month as practicable or as much oftener by a joint test as is found necessary in practice. The method of test shall be by Edwards Balance or by such other method as shall be agreed upon by the parties. The regular test at the first of the month shall determine the specific gravity to be used in computations for the measurement of gas deliveries until the end of such month or until changed by subsequent test; any special test to be applicable from the day made until changed by subsequent test. It is provided, however, that by agreement between the parties a suitable continuous method may be adopted.

(e) The relative humidity of the gas delivered hereunder shall be determined by approved methods at the beginning of delivery of gas to Buyer and at such times thereafter as may be agreed upon by both parties.

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Heat Value

The gross heating value of the gas per cubic foot, as defined in Section 4 (a) above, shall be determined by taking

the arithmetic average of the daily record of a recording calorimeter of a type to be mutually agreed upon, such recording calorimeter to be checked once each day, or at such other intervals as the parties may agree upon, by comparison with a manually operated calorimeter of a type approved by the U. S. Bureau of Standards and operated in accordance with methods recommended by the said Bureau. If upon any test any calorimeter shall be found to be not more than 2% in error, previous readings of such calorimeter shall be considered correct in computing the heat value of gas delivered by Seller to Buyer. If upon any test any calorimeter shall be found to be in error by more than 2%, then any previous readings of such calorimeter shall be corrected to zero error for any period which is definitely known and/or agreed upon, but in case the period is not definitely known or agreed upon, such correction shall be for a period extending over one-half the time elapsed since the date of last calibration, not exceeding a correction period of four (4) days.

Article VI

Metering Equipment

1. Buyer shall provide in all contracts with Special Industrial Customers that Seller shall have the right at all times during business hours to inspect the measuring and recording equipment of Buyer pertaining to sales to such Special Industrial Customers.

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2. Each party shall have the right to be present, at its election, at the time of any installing, reading, cleaning, changing, repairing, inspecting or adjusting done in connection with the other party's measuring equipment and each party shall advise the other party of any intended major maintenance operation sufficiently in advance in order that the other party may conveniently have its representative present. The records from such measuring equipment shall remain the property of the party owning the meter, but, upon the request of either party, the party owning the meter will submit to the other party such records and charts together with calculations therefrom for the other party's inspection and verification, subject to return within ten days after receipt thereof.

3. The total capacity of the gas measuring equipment installed by Seller shall be sufficient to permit the testing and withdrawal of any individual meter from service without restricting the delivery of gas or interrupting the measurement of gas. The installation, maintenance and operation of regulating equipment shall be such as not to affect the accuracy of the gas volume determination made from Seller's meters. The meter or meters of Seller shall be so located or protected as to assure freedom from pulsations, vibrations, or surges at the meter or meters from any cause in so far as such protection is obtainable within practicable limits mutually agreed upon to embody the best knowledge and information available.

4. Either party shall have the right to examine and approve, or object to, the plans of the other for the installation by it of such measuring equipment, and none of said installations shall be placed in service for the measurement of gas hereunder unless and until both parties are satisfied,

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or it shall be determined by arbitration, that such installation has been made in such manner as to permit of accurate determination of the quantity of gas to be delivered hereunder and to permit ready verification of the accuracy of measurement.

5. Seller agrees to provide without expense to Buyer check measuring equipment together with a suitable site for the location of said check measuring equipment which shall be operated by Buyer. Any property of Buyer which may be placed thereon shall be and remain Buyer's property. Such check meters and equipment shall be so installed as not to interfere with the operation of meters of Seller. Seller shall have access to such check measuring equipment at all reasonable hours but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by employees or agents of Buyer. Seller shall have the right to be present, at its election, at the time of any installing, reading, cleaning, repairing, inspecting, calibrating or adjusting done in connection with such check measuring equipment or with Buyer's meters measuring gas to Special Industrial Customers. Charts and records from said check measuring equipment, together with calculations

therefrom, shall be available to Seller for inspection and verification, subject to return by Seller within ten (10) days after receipt thereof.

6. If for any reason meters are out of service and/or out of repair so that the quantity of gas delivered is not correctly indicated by the reading thereof, the gas delivered through the period such meters are out of service and/or out of repair shall be estimated and agreed upon by the

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parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of any check meter or meters if installed and accurately registering;

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation; or

(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

7. From time to time, and at least once each month, on a date as near the first of the month as practicable, the accuracy of Seller's measuring equipment shall be verified, at Seller's expense, in the presence of representatives of both Seller and Buyer, and the parties shall jointly observe any adjustments which are made in such measuring equipment. If either party at any time shall notify the other that it desires a special test of any meter, the parties shall cooperate to secure the immediate verification of the accuracy of the measuring equipment and joint observation of any adjustments. Each party shall give to the other notice of the time of all tests of meters sufficiently in advance of the holding of the tests in order that the other party may conveniently have its representative present.

8. If upon any test any meter is found to be not more than two per cent. (2%) fast or slow, previous readings of such meters shall be considered correct in computing the volume of gas delivered by Seller to Buyer; but the meter shall at once be properly adjusted to record accurately. If upon any test any meter shall be found to be inaccurate

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by an amount exceeding two per cent. (2%), then any previous readings of such meter shall be corrected to zero error for any period which is definitely known and/or agreed upon, but in case the period is not definitely known and/or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of last calibration, not exceeding a correction period of sixteen (16) days.

9. The meters of Seller shall be read at seven o'clock Standard Time (or Daylight Saving Time whichever shall be in effect), in the morning of each day of each calendar month, or as near to that time as practical operating conditions will permit.

10. Each party hereto shall preserve for a period of at least five (5) years all test data, charts and other records resulting from performance by it of the terms of this Agreement.

Article VII

Rate and Computation of Bills

1. All gas purchased by Buyer from Seller for resale to Special Industrial Customers shall be paid for at the respective prices agreed upon between Buyer and Seller for such gas.

2. For all gas purchased by Buyer from Seller hereunder, other than gas purchased for resale to Special Industrial Customers, subject to the provisions of Sections 3, 4 and 5 of this Article VII, the price shall be as follows:

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Demand Charge:

For each month, a sum equal to thirty-eight cents (38¢) multiplied by the maximum daily demand, as hereinafter defined. The term "maximum daily demand" shall mean the greatest number of therms delivered on any one day during the immediately preceding winter period, consisting of the months of December, January, February and March, after deducting the sum of the demands of the Special Industrial Customers provided for herein on said day, ex-

cept that the demand for each month prior to the expiration of the first winter period shall be billed on the actual maximum daily demand established during the said month.

Commodity Charge:

In addition to the demand charge, the sum of one and one-half (1½¢) per therm for the total number of therms delivered by Seller to Buyer hereunder during such month.

If the total quantity of therms taken in any one year is less than the minimum requirement provided in Section 4 of Article II, then for the therms representing such deficiency Buyer shall pay at the same average rate per therm as it has paid for such gas as it has actually taken in said year.

3. For all gas delivered between the Date of Initial Delivery and the Effective Date, the price shall be at a flat rate of three cents (3¢) per therm.

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4. If, at the end of any calendar year during the term of this Agreement, it shall be found that by reason of any legislation enacted by the Federal Government, or regulations or orders of any of its governmental agencies, or, as hereinafter limited and defined, by reason of any state or local legislation, or regulations or orders of state or local governmental agencies, there has been a direct increase or decrease in the operating costs of Seller's transmission line, applicable and incidental to the gas delivered to Buyer hereunder, in respect only to the rates of wages, hours of labor, prices of materials and supplies and rates of taxation, as a result of which (computed as hereinafter set out) such operating costs have for such year just passed increased or diminished 20% or more from the costs experienced by Seller during the first twelve calendar months of operation after the Effective Date of this Agreement, then and in such event one-half of one-twelfth of the amount of such increase or decrease shall be added to or deducted from the charge for gas as provided in paragraph 2 of Article VII for each month of the ensuing year.

In computing the amount of any such increase or decrease, applicable to the gas sold to Buyer, the increases or decreases due to national legislation, regulations or

orders shall be that proportion of the total amount which the gas sold to Buyer hereunder (other than to Special Industrial Customers) bears to the total gas transmitted by the Seller in its pipe line; and due to State of Michigan and local legislation, regulations or orders shall be that proportion of the total amount which the gas sold to Buyer hereunder (other than to Special Industrial Customers) bears to the total gas transmitted and sold by Seller in said State and locality respectively.

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In the event of the imposition of a production tax or other similar tax in Texas or Kansas or either of them, the increase or decrease due thereto shall be determined by first ascertaining the quantity of gas produced and/or purchased by Seller in such State and delivered to said pipe line and upon which such tax has been paid. Buyer shall be deemed to have received of such gas the same proportion thereof that the gas purchased by Buyer bears to the total gas transmitted by Seller in its pipe line. In general the applicable increase or decrease due to such State legislation, regulations or orders shall be that proportion of the increased cost which the quantity of gas sold to Buyer bears to the total quantity transmitted beyond the boundary line of such State.

Adjustments shall be made thereafter annually, at the close of each calendar year and in the same manner, but if at the end of any calendar year it be found that the increase or decrease for such calendar year, based upon the costs during the first twelve calendar months period of operation, and computed as herein provided, be less than 20%, then the charge for gas set forth in Section 2 of Article VII shall remain in force for the next succeeding calendar year.

In computing increase or decrease in taxation there shall not be considered changes in income taxes, excess profits taxes, capital stock taxes, franchise taxes or general property taxes, or such taxes as by plain provision or intent of the law are to be paid by the party taxed and not passed on to the consumer. Neither shall there be considered any increase or decrease in costs or regulation by any state or national commissions engaged purely in the regulation of utilities or carriers.

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As soon as possible after the close of each calendar year Seller shall furnish Buyer with a computation showing the increase or decrease in such operating costs, and such amount as it claims the charges for gas should be increased or decreased for the ensuing year. For the purpose of determining the accuracy of such computation and the facts upon which it is based, Buyer shall have the right at any reasonable time or times, by its duly authorized agents or accountants, but no more than once a year, to audit the pertinent records and books of account of Seller, and of any successor carrying out this Agreement.

5. As Seller's share in Buyer's cost of changing over its distribution system to adapt it to the distribution of natural gas or mixed gas, Seller will contribute to Buyer the sum of $220,000, by way of twelve equal monthly credits against the monthly bills to be rendered by Seller to Buyer pursuant to Article VIII of this Agreement, and during the first year immediately following the Effective Date.

Article VIII

Billing

1. On or before the fifth day of each month, Buyer shall render to Seller a statement showing for the preceding calendar month the volume of natural gas shown by its meters to have been delivered by Buyer to each of its Special Industrial Customers.

2. Seller shall, on or before the tenth day of each calendar month, render to Buyer a statement showing the following:

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(1) The total number of therms delivered by Seller to Buyer during the preceding calendar month; with complete computation showing procedure by which determined;

(2) The number of therms delivered by Buyer to each of the Special Industrial Customers during the preceding calendar month, in accordance with its aforesaid statement.

(3) The total number of therms delivered by Seller to Buyer for other than Special Industrial Customers during

the preceding calendar month, in accordance with its aforesaid statements (1) and (2);

(4) The maximum daily demand applicable to the period; and

(5) The payment then due from Buyer to Seller determined as provided in this Agreement and in any other Agreements between the parties relating to sales to Special Industrial Customers.

Such statements shall be accompanied by charts showing the basis on which the daily deliveries in therms were computed.

3. Each party shall have the right to examine at reasonable times the books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions of this Agreement.

Article IX

Payments

1. Buyer agrees to pay Seller at its designated office on or before the twentieth day of each calendar month for

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natural gas delivered during the preceding month, according to the measurements, computations and prices herein provided and billed by Seller in the statement for said month, excepting that in the event that at any time Buyer shall dispute the correctness of any statment so rendered, then payment shall be made by Buyer for such amounts as it concedes to be correct and such amount as may be in dispute shall be settled by agreement by mutual submission to arbitration, or by court action. Any payment by Buyer shall not prejudice its right to adjustment of any bill to which it has taken exception or may subsequently take exception within a reasonable time after discovery of its right to such adjustment, but in any event within twelve (12) months from date of bill.

2. Should Buyer fail to pay the amount of any bill for gas rendered by Seller as herein provided, when such amount is due, interest thereon shall accrue at the rate of

6% per annum from the due date until the date of payment. If such failure to pay continues for 60 days after payment is due, Seller may, in addition to any other remedy it may have hereunder, suspend further delivery of gas until such amount is paid, provided, however, that if the Buyer shall, in good faith, either dispute the amount of any such bills or parts thereof, or present a counter-claim or offset against the same, and shall at any time thereafter within thirty (30) days of a demand made by Seller, furnish a good and sufficient surety bond, in amount and with sureties to be approved by Seller, conditioned upon the payment of any amounts ultimately to be found due upon such bills after a final determination, which may be reached either by agreement, arbitration award or judgment of the courts as may be the case, then such bills shall not be deemed to be due

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within the meaning of this paragraph unless and until default be made in the conditions of such bond.

Except as Seller may question the ability of Buyer to respond in damages, it need not demand or require such bond and it may permit such disputed amounts to accumulate, but in the event Seller shall require Buyer to give bond then Seller shall be obligated to institute appropriate legal action to determine such dispute within one year after the date of the bills in question, or unless by agreement of the parties the matter be submitted to arbitration within such period.

3. If presentation of bill by Seller is delayed after the tenth day of the month, then the time of payment shall be extended correspondingly, unless the delay in the presentation of the bill is occasioned by the delay on the part of Buyer in furnishing a statement of the amount of natural gas delivered to Special Industrial Customers.

4. If it shall be found at any time that Buyer has been overcharged in any form whatsoever under the provisions hereof, and Buyer shall have actually paid the bills containing such overcharges, Seller shall refund such amount or amounts of overcharges within thirty (30) days of the determination thereof, with interest thereon at the rate of six per cent (6%) per annum from the times respectively

when such overcharges were paid until the date of refund, provided, however, that claim therefor shall have been made within sixty (60) days from the date of discovery of any such overcharges, but in any event within twelve (12) months of bill.

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Article X

Operations by Seller

1. Seller agrees that all construction of pipe lines shall be of adequate capacity for the delivery of gas to Buyer in accordance with the requirements of this Agreement, but not to exceed a maximum amount of 90,000,000 cubic feet of gas per day or its equivalent nine hundred and twelve thousand six hundred therms.

2. In addition to the sources of supply, contracts for the purchase of gas, and transmission facilities which Seller represents it now holds or has available through subsidiaries, Seller agrees at all times to hold or have available through subsidiaries, sufficient gas acreage and gas production facilities to meet the requirements of this Agreement and its other obligations for the sale of gas and to have sufficient gas available and/or to hold long term gas purchase contracts with responsible parties calling for the sale and delivery to it of gas in sufficient quantities for the aforesaid purposes and to own or have available through subsidiaries or contract rights a system of pipe lines which shall be of adequate size for the transmission of gas from the various sources of supply to the Place of Delivery hereunder.

3. It is further understood and agreed that Buyer is a public utility company operating in the metropolitan area of Detroit, Michigan, and that, inasmuch as one of its most important obligations is to supply the City of Detroit and its environs with gas, Seller shall operate its pipe line, or cause the same to be operated, in such manner as to assure, as nearly as is reasonably possible, continuous supply of gas in the quantity and of the quality required by this Agreement.

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Article XI

Buyer's Facilities

1. Buyer agrees to make such changes in its distribution system as may be necessary to enable it to distribute natural gas and agrees to proceed to make such changes in time to be prepared to receive deliveries of natural gas on the Effective Date.

2. Buyer agrees to give Seller notice at all times, as far in advance as operating conditions will permit, of the estimated daily, monthly and annual quantities of natural gas required hereunder and the anticipated peak hourly demands. Buyer shall use its best judgment and experience in arriving at such estimates, but shall not be bound by the quantities thereof.

3. Buyer agrees that it will, subject to temporary or permanent outage resulting from either unavoidable deterioration or casualty, maintain in operation the storage holders which it now has, and will operate the same each day so as to assist in leveling the peak demands for natural gas to be delivered by Seller hereunder, subject, however, to the right of Buyer to keep at all times in its holders a reserve of gas of sufficient quantity to insure safe and adequate service to its customers as determined by Buyer; and Buyer will as nearly as practicable, with such storage capacity, take natural gas in equal and uniform hourly volumes. Subject to the aforesaid use by Buyer of holder capacity, Seller agrees to deliver to Buyer natural gas in accordance with the hourly and daily demands of the markets of Buyer up to but not to exceed a maximum daily demand of 90,000,000 cubic feet, or its equivalent nine hundred and twelve thousand six hundred therms.

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4. Inasmuch as interruptions in the delivery of gas hereunder may from time to time occur due to force majeure, as herein defined, or otherwise, and Buyer serving the large population and industries within the metropolitan area of Detroit, being in duty bound to maintain

its present water gas generating plants in good operating condition to effect continuity of service during such periods of interrupted service on the part of Seller, and because, in order to furnish gas of substantially the heat equivalent of natural gas it will be necessary for Buyer to make large expenditures on such generating equipment, Seller recognizes and agrees that notwithstanding the covenant that Buyer will purchase from Seller all its natural gas requirements, Buyer may use its present generating plants from time to time to manufacture gas substantially equivalent in heat units to natural gas, to assist in leveling those peak demands which would otherwise increase the cost of gas under this Agreement, provided, however, that Buyer shall pay for the minimum requirements specified in Section 4 of Article II; provided, further, that nothing in this Section contained shall limit Seller's obligation to furnish Buyer's requirements for gas as elsewhere herein provided.

Article XII

Place and Point of Delivery

The Place of Delivery for all gas to be delivered by Seller to Buyer hereunder shall be at Buyer's River Rouge plant, Greenfield and Allen Roads, in Melvindale, Michigan, except in the case of such Special Industrial Customers as shall be served directly from some other point on Seller's

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pipe line, as may be agreed on by the parties. The Point of Delivery shall be the outlet side of Seller's meters at the Place of Delivery and before passing through Buyer's regulators.

Article XIII

Possession of Gas

1. As between the parties hereto, Seller shall be in control and possession of the gas delivered hereunder and responsible for any damage or injury caused thereby until the same shall have been delivered to Buyer at the Point of Delivery, after which Buyer shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

2. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the maintenance or operation of the property and/or equipment of the indemnifying party, the Point of Delivery of the gas as hereinbefore specified to be the point of division of responsibility between the parties.

Article XIV

Pressure

Seller agrees to furnish gas hereunder at such pressures as Buyer may require, up to but not exceeding 100 pounds to the square inch gauge pressure, at the Point of Delivery. Buyer agrees to install, operate and maintain at the Point of Delivery such regulating devices as may be necessary to regulate the pressure of the gas delivered hereunder. Seller agrees to use due care and diligence to furnish gas to Buyer at a uniform pressure.

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Article XV

Force Majeure

1. Neither party shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

2. Such causes or contingencies affecting the performance of this Agreement by either party, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to

remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this Agreement relieve either party from its obligations to make payments of amounts then due hereunder; nor shall such causes or contingencies relieve either party of liability unless such party shall give notice and full particulars of the same in writing or by telegraph to the other party as soon as possible after the occurrence relied on.

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Article XVI

Warranty of Title to Gas

Seller agrees that it will and hereby does warrant generally the title to all gas delivered under this Agreement and the right to sell the same and that such gas shall be free and clear from all liens and adverse claims and that it will indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas and/or to royalties, taxes, license fees or charges thereon, which are applicable before the title to the gas passes to Buyer or which may be levied and assessed upon the sale thereof to Buyer. In the event any adverse claim of any character whatsoever is asserted in respect of any of said gas, Buyer may retain the purchase price thereof up to the amount of such claim without interest until such claim has been finally determined, as security for the performance of Seller's obligations with respect to such claim under this Section, or until Seller shall have furnished bond to Buyer, in an amount and with sureties satisfactory to Buyer, conditioned for the protection of Buyer with respect to such claim.

Article XVII

Patents

In case Buyer should wish to use gas purchased hereunder for reforming, Seller will undertake to secure for Buyer, without cost to Buyer, the right to use in the area now served by Buyer, necessary processes covered by patents which Seller can control.

[fol. 312] 31

Article XVIII

Remedies

1. In the event that:

(a) Seller should be unable to, or fail, for a period longer than ninety (90) days to deliver gas of a standard and British thermal unit content as provided in this Agreement or which would meet the approval of any governmental agency having jurisdiction over Buyer, Buyer may by written notice to Seller cancel and terminate this Agreement in five days, on condition that at least sixty (60) days before said notice be given, Buyer shall have notified Seller that the gas delivered, or sought to be delivered; is below standard or unacceptable to the regulatory body and that said condition has then pertained for a period of thirty (30) days.

In the event that:

(b) Seller should, for a period of five (5) consecutive days, fail to deliver to Buyer any material portion of the gas which under this Agreement it is bound to deliver, or

(c) there should be a deficiency in deliveries, caused by the failure or inability of Seller to deliver the quantity of gas which Buyer desires and is entitled to demand under this Agreement on any day of each seven (7) day period over a period of six (6) consecutive seven (7) day periods, commencing with the day on which deficiency first occurred,

[fol. 313] 32

Buyer may, within two (2) weeks of the last day of any such periods provided in (b) and (c), by written notice cancel and terminate this Agreement, to be effective six (6) months from the delivery of such notice, on condition that Buyer shall have notified Seller in writing of each such daily deficiency or deficiencies within forty-eight (48) hours after the same shall have occurred.

If by reason of any of the causes enumerated in Section 1, Article XV, either party is effectively prevented or prohibited from further carrying out this Agreement, or if by reason of any order of court or governmental agency re-

sisted by all reasonable legal means, Buyer is prevented from selling and distributing gas within the City of Detroit, then either party may by five (5) days written notice to the other party, cancel and terminate this Agreement, without liability of any kind from one to the other, excepting for such transactions and dealings as were had and completed prior to the effective date of such cancellation.

In the event that Buyer shall fail to pay any bill rendered it by Seller for gas delivered under this Agreement within sixty (60) days after the same became due, Seller may, in addition to all other remedies which it may have at law in addition to those provided herein, at any time thereafter by written notice to Buyer, cancel and terminate this Agreement, to be effective six (6) months from the delivery of such notice, provided that this remedy shall not be available or effective in case of default in the payment of disputed bills as elsewhere provided herein.

2. Any cancellation of this Agreement pursuant to the provisions of this Article XVIII shall be without prejudice to the right of Seller to collect any amounts then due it

[fol. 314] 33

for gas delivered prior to the effective date of the cancellation, subject to any proper counterclaims or set-offs of Buyer, and without waiver of any remedy to which the party not in default may be entitled for violation of this Agreement.

3. The remedies herein specifically provided for are cumulative, and in addition to all rights and remedies for specific performance or for damages, including loss of return and profits, or otherwise, which either party may have at law or in equity for breach by the other party of any agreement, condition or covenant contained herein, which rights and remedies neither Buyer nor Seller shall in anywise be deemed to have waived either by the expressed provisions for the foregoing remedies or by the exercise of any thereof; provided, however, that in the event that this Agreement be cancelled or terminated by reason of any of the causes enumerated in Section 1 of Article XV hereof, or by reason of any order of court or governmental agency prohibiting the Buyer from distributing natural gas within the City of Detroit which has been

resisted by all reasonable legal means, there shall be no liability upon the part of either party to the other, excepting such liability as remains unsettled between the parties arising from the sale of gas and such transactions as were had and completed between the parties prior to cancellation.

4. If Seller shall at any time fail to deliver gas in volumes and/or at such pressures as Buyer may require up to the limits otherwise herein provided, Seller shall, unless relieved by the terms of Article XV hereof, reimburse and indemnify Buyer for any expenses, loss or damage which it may sustain by reason of such failure, including

[fol. 315] 34

the expense of putting into operation any gas manufacturing equipment, and/or obtaining manufactured gas or natural gas to remedy such deficiency.

Article XIX

Miscellaneous

1. There shall be no modification of the terms and provisions hereof except by the formal execution of supplementary written contracts.

2. No waiver by either party of any one or more defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

3. Seller may assign its rights and obligations hereunder to a corporation to be formed for the purpose of carrying out this Agreement. Either Seller or Buyer may assign the rights and obligations of this Agreement to a corporation which shall receive the assets of such assignor and obligate itself to carry out the provisions hereof binding on such assignor, in which event the assignor shall be released hereunder, but otherwise neither party shall assign this Agreement or any of its rights hereunder unless it shall first have obtained the consent thereto of the other party.

4. Any notice, request, demand, statement or bill provided for in this Agreement shall be in writing and shall

be duly delivered when mailed by registered mail to the Post Office address of either of the parties hereto, as the case may be, as follows:

[fol. 316] 35

Seller: Panhandle Eastern Pipe Line Company, 101 West 11th Street, Kansas City, Mo.

Buyer: Detroit City Gas Company, 415 Clifford Street, Detroit, Michigan.

or at such other address as either party shall designate for the purpose.

5. This Agreement shall be binding on any company which shall succeed by purchase, merger or consolidation to the properties of the Seller or Buyer, as the case may be.

6. Buyer will adopt and use schedules and forms of rates which will in its judgment tend to stimulate sales of natural gas for domestic, industrial and commercial purposes and for house heating. Buyer will make every reasonable effort to increase and build up the sales of natural gas throughout its gas distribution system and Seller will cooperate with Buyer in accomplishing this result. Buyer agrees to make such reasonable extensions to its distribution system as would be susceptible of earning a reasonable return on the investment.

[fol. 317] 36

In Witness Whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

Panhandle Eastern Pipe Line Company, by B. R. Bay, President. (Corporate Seal.) Attest: N. F. Paxton, Assistant Secretary.

Detroit City Gas Company, by Wm. G. Woolfolk, President. (Corporate Seal.) Attest: Chas. S. Ritter, Secretary.

Approved as to form: James O. Murfin, Park Chamberlain.

[fol. 318] EXHIBIT "G" TO REPORT

Tuesday, March 17, 1936.

Panhandle Eastern Pipe Line Company, 61 Broadway, New York.

DEAR SIRS:

As Trustee under the Decree of January 29, 1936, in Equity No. 1099 in the United States District Court of Delaware, I hereby notify you that I have approved the contract between you and Michigan Gas Transmission Corporation dated March 17, 1936.

I am satisfied that this contract is in the interest of Panhandle Eastern Pipe Line Company and in compliance with the Decree.

It is to be understood that the contract is to be performed in accordance with the Decree and that all the acts and operations of the parties under the contract are subject to the restrictions and conditions of the Decree.

I have examined the construction program planned for the Panhandle Eastern Pipe Line Company, and am satisfied that it does not require the Company to provide more gas production or transportation facilities than are sufficient in practice to meet the actual gas requirements of the Detroit City Gas Company as they shall develop under the Detroit contract, and that the flexibility in the construction program necessary to accommodate it to the growth or otherwise in the Detroit demand as the future may from time to time determine, is wholly within the judgment and control of the Board of Directors of the Panhandle Eastern Pipe Line Company.

Respectfully yours, Gano Dunn, Trustee.

[fol. 319] EXHIBIT "K" TO REPORT

Agreement, dated as of the 1st day of June, 1936, between Columbia Oil & Gasoline Corporation, a Delaware corporation (hereinafter called Columbia Oil), party of the first part; Columbia Gas & Electric Corporation, a Delaware corporation (hereinafter called Columbia Gas), party of the second part; and Henry T. Bush and C. Ray Phillips,

Receivers (hereinafter called the Receivers) of Missouri-Kansas Pipe Line Company, a Delaware corporation (hereinafter called Mo-Kan), appointed by the Court of Chancery of the State of Delaware, parties of the third part.

Columbia Oil and Columbia Gas severally represent as follows:

(a) Panhandle Eastern Pipe Line Company (hereinafter referred to as Eastern), a Delaware corporation, has now outstanding the following capitalization of Bonds, Notes, Preferred Stock and Common Stock, which are owned by [fol. 320] Columbia Oil, Panhandle Corporation (a Maryland corporation, hereinafter referred to as Panhandle), and the public, respectively, as follows:

	Owned By		
	Columbia Oil	Panhandle	Public
Mortgage 6% Bonds.....	$14,574,500	$ —	$3,315,500
Notes due September 1, 1937*	800,000	800,000	—
Preferred Stock (par value)...	4,700,000	4,700,000	—
Common Stock (No par val.)..	404,326 shs.	324,326 shs.**	—

(*) These Notes bear no interest until September 1, 1936, and 5% interest for one year thereafter, payable as maturity, and are convertible at the option of the holders, par for par, into Preferred Stock.

(**) Panhandle Corporation also holds rights to subscribe for 80,000 shares of Common Stock at $25 per share.

The parties have knowledge of the terms of the Bonds and the Mortgage securing the same, of the Notes and of the Preferred and Common Stock and of the provisions of the charter of Eastern affecting the same.

(b) Of said 404,326 shares of Common Stock of Eastern owned by Columbia Oil, 80,000 thereof were acquired by it on April 1, 1936, by the exercise of rights to subscribe to said Common Stock at the price of $25 per share offered by Eastern to its stockholders. The time for the exercise of the rights to subscribe to an equal number of shares on similar terms offered by Eastern to Panhandle, has been extended by Eastern for a period sufficient to enable this Agreement to be carried out and the rights to be distributed as hereinafter provided.

(c) Panhandle has a capitalization consisting of $4,901,000 principal amount of Two-Year 6% Collateral Trust [fol. 321] Notes (which are now in default), a current debt of $232,641.65 and 1,000 shares of Common Stock. All of

said Notes and current debt and 750 shares of said Stock are owned by Columbia Oil. All of said Notes are guaranteed, as to principal and interest, by Mo-Kan, and are secured by pledge of the $800,000 principal amount of Notes, the 47,000 shares of Preferred Stock and the 324,326 shares of Common Stock of Eastern and the rights to subscribe for 80,000 additional shares of such Common Stock, above referred to, which are owned by Panhandle.

(d) Eastern has entered into a contract, dated the 31st day of August, 1935, of which contract and the terms thereof the parties hereto have knowledge, with Detroit City Gas Company, whereby Eastern has contracted to supply the natural gas requirements of Detroit City Gas Company, up to the maximum amount therein specified, for a period of fifteen years, as more fully set forth in said contract (hereinafter called the Detroit Contract).

(e) Eastern, Columbia Gas and Columbia Oil have entered into a contract, dated January 31, 1936, of which contract and the terms thereof the parties hereto have knowledge, providing for the financing of the construction of a pipe line connecting the eastern terminus of Eastern's existing pipe line at a point in Vermilion County, Indiana, adjacent to the Illinois-Indiana state line, with the place of delivery specified in the Detroit Contract, as well as the reinforcement of the present pipe line of Eastern.

(f) Columbia Gas and Columbia Oil have entered into a contract, dated January 31, 1936, as supplemented by a letter from Columbia Gas to Columbia Oil, dated April 22, 1936, [fol. 322] of which contract and letter and the terms thereof the parties hereto have knowledge, providing for the advancing by Columbia Gas to Columbia Oil of all sums needed by Columbia Oil to enable it to carry out its obligations under this Agreement.

(g) Eastern has entered into a contract dated March 17, 1936, of which contract and the terms thereof the parties hereto have knowledge, with Michigan Gas Transmission Corporation (hereinafter referred to as Michigan), a Delaware corporation, all of the stock of which is owned by Columbia Gas, providing for the delivery by Eastern to Michigan, and the delivery by it to Detroit City Gas Company, of the amount of gas necessary to fulfill the actual requirements of the Detroit Contract.

The Chancellor of the State of Delaware has made an order, dated the 29th day of April, 1936, in the Delaware receivership proceedings of Mo-Kan, of which order and the terms thereof the parties hereto have knowledge, authorizing the Receivers to take the action called for on their part in this Agreement. The United States District Court for the Northern District of Illinois, Eastern Division, has made an order, dated the 14th day of May, 1936, in the Illinois Federal receivership proceedings of Mo-Kan, of which order and the terms thereof the parties hereto have knowledge, authorizing the receiver therein to join with the Receivers in executing the release hereinafter referred to in Subdivision (c) of Article III of this Agreement.

The purpose and intent of this Agreement is to express in one document, for the sake of convenience, and not to change or modify, the offer of Columbia Oil and Columbia [fol. 323] Gas to the Receivers, dated January 31, 1936, as extended pursuant to the letter from Columbia Oil and Columbia Gas to Frank P. Parish and Dupuy G. Warrick, dated March 5, 1936, and as modified according to the suggestions of the letter of the Receivers to Columbia Oil and Columbia Gas dated April 22, 1936, which modifications were under the same date accepted by Columbia Oil and Columbia Gas, and which offer, as so extended and modified, was approved by the Court of Chancery of the State of Delaware by said order dated April 29, 1936.

Now, therefore, in consideration of the mutual covenants and agreements herein set forth, the parties hereto, severally and not jointly, hereby agree as follows:

I. Columbia Oil agrees with the parties hereto as follows:

(a) That it will pay to the Receivers $300,000 in cash, to be applied toward the expenses of the Receivership of Mo-Kan and liquidating other obligations of Mo-Kan.

(b) That, as holder of all of the outstanding indebtedness and 750 shares of the Stock of Panhandle, it will cause Panhandle to accept the surrender by the Receivers to Panhandle of the 250 shares of the Stock of Panhandle now owned by the Receivers pursuant to the provisions of Subdivision (a) of Article III of this Agreement and will cause Panhandle to assign and deliver to the Receivers properly endorsed and stamped for transfer the 324,326 shares of

Common Stock of Eastern and the rights to subscribe to 80,000 shares of Common Stock of Eastern preferred to in the following Subdivision (c), now owned by Panhandle, [fol. 324] and will hold the Receivers and Mo-Kan harmless from all claims of creditors of Panhandle in respect of the assets so assigned and delivered.

(c) That it will, with the cooperation of the Receivers, cause Eastern to fix the period within which the aforesaid subscription rights now held by Panhandle may be exercised, to and including the 90th day following the termination of the Receivership, but in no case beyond January 1, 1937; provided, however, that, if, prior to the exercise of said subscription rights it shall appear, either from an opinion of Eastern's counsel or from action by the Securities and Exchange Commission, that registration of said subscription rights or of the Common Stock of Eastern called for thereby under the Securities Act of 1933, as amended, is necessary, then and in that event the Receivers will cooperate with Columbia Oil in causing Eastern to file a registration statement under said Act, at Eastern's expense, in respect of said rights or Common Stock, as the case may be, and to extend the period during which such subscription rights may be exercised to and including the 90th day following the effective date of said registration statement. That it will, with the cooperation of the Receivers, cause Eastern to deliver to the Receivers, when requested by them, on such reasonable notice as shall suffice for preparation and printing, in order that they may distribute the same to the stockholders of Mo-Kan, as hereinafter provided, transferable subscription warrants evidencing the subscription rights referred to in the foregoing Subdivision (b) of this Article I. That it will purchase any shares not so subscribed for by said stockholders at the price of $25 per share.

[fol. 325] (d) That it will, with the cooperation of the Receivers, cause Eastern and its subsidiary, Central Distributing Company, to release and withdraw all their claims aggregating $42,606.74 filed in the Mo-Kan receivership.

(e) That it will cancel or cause the cancellation of the guaranty by Mo-Kan of the principal of, and interest on, the Two-Year 6% Collateral Trust Notes of Panhandle now outstanding and will release Mo-Kan of all liability with respect to said guaranty and cause the withdrawal of the

claim filed by Chemical Bank & Trust Company, as Trustee, upon the Two-Year 6% Collateral Trust Notes of Panhandle in the principal amount of $4,940,000 in the Mo-Kan receivership proceeding.

(f) That it will, with the cooperation of the Receivers, cause Eastern to amend its Mortgage Trust Indenture dated as of October 1, 1930 (as heretofore amended) so as to increase the Sinking Fund for the Bonds of Series A thereunder to an amount calculated, on a cumulative basis, to retire the principal amount of all of the Bonds of Series A by October 1, 1951.

(g) That it will, with the cooperation of the Receivers cause Eastern to amend its Certificate of Incorporation so as to authorize, in lieu of the 110,000 shares of Convertible Cumulative Preferred Stock now authorized, two classes of Preferred Stock, to be designated as Class A Preferred Stock and Class B Preferred Stock and to have powers, preferences and rights, and qualifications, limitations and restrictions, respectively, as set forth in the form of Certificate of Amendment of Certificate of Incorporation attached hereto as Exhibit A.

[fol. 326] (h) That it will convert, or cause to be converted, the $1,600,000 principal amount of Promissory Notes due September 1, 1937, of Eastern into 16,000 shares of Preferred Stock of Eastern and will surrender, or cause to be surrendered, all of the Preferred Stock of Eastern in exchange for the two new classes of Preferred Stock referred to in the foregoing Subdivision (g) of this Article I.

(i) That it will purchase from the Receivers at $25 per share up to 40,000 shares of Common Stock of Eastern which the Receivers will obtain pursuant to the foregoing Subdivision (b) of this Article I; provided, however, that (1) at least such number of shares be first offered to the stockholders of Mo-Kan for purchase by them at $25 per share, in addition to, at the same time, in the same manner and subject to the same conditions respecting the filing of a registration statement, as the shares covered by the subscription rights referred to in the foregoing Subdivision (c) of this Article I; (2) the obligation of Columbia Oil shall be to purchase only such portion of the shares so offered as shall not be purchased by said stockholders pursuant to such offering; (3) the money so provided by Columbia Oil

shall be used only for the purpose of paying claims adjudicated in the receivership proceedings and administration fees and expenses allowed by the Chancellor; and (4) to the extent there shall not be needed for said purpose the full $1,000,000 which would be so provided by Columbia Oil if it purchased 40,000 shares of Common Stock of Eastern at $25 per share, Columbia Oil shall not be called upon to make such purchase.

[fol. 327] (j) That, if it is called upon at any time within six months after the termination of the receivership but not later than December 31, 1937, so to do, it will sell, to Mo-Kan, or to any new company taking over the assets of Mo-Kan under a plan of reorganization, readjustment or reclassification, such shares of Common Stock of Eastern as Columbia Oil shall have acquired pursuant to the provisions of the foregoing Subdivisions (c) and (i) of this Article I, at the price of $25 per share plus interest at the rate of 6% per annum from the date of purchase by Columbia Oil to the date of such sale.

(k) That in the event Eastern elects to redeem at any time part of its Class A Preferred Stock out of earnings, Columbia Oil will waive the premium of $10 per share payable on the redemption of such shares of Class A Preferred Stock as may at the time be owned, held or controlled by it and be then called for redemption.

(l) That it will, with the cooperation of the Receivers, and subject to the approval of the Trustee appointed by the United States District Court for the District of Delaware in the decree entered January 29, 1936 in the cause entitled "United States of America, Petitioner, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, et al., Defendants," said cause being No. 1099, in equity, cause the Board of Directors of Eastern to consist in part of three representatives of the Receivers until the next annual meeting of the stockholders. If the two Receivers continue as members of the Board they shall be considered as two of such representatives.

[fol. 328] (m) That it will, with the cooperation of the Receivers, cause Eastern to execute and deliver to the Receivers and to Mo-Kan a good and sufficient release, releasing all claims it may have against them or any of them, in the form attached hereto as Exhibit B.

II. Columbia Gas agrees with the parties hereto that, in the event Eastern elects to redeem at any time part of its Class A Preferred Stock out of earnings, Columbia Gas will waive the premium of $10 per share payable on the redemption of such shares of Class A Preferred Stock, if any, as may at the time be owned, held or controlled by it and be then called for redemption.

III. The Receivers agree with the parties hereto as follows:

(a) That they will surrender to Panhandle the 250 shares of the Stock of Panhandle which they now hold, in consideration of the assignment and delivery by Panhandle to them of the 324,326 shares of Common Stock of Eastern and the rights to subscribe to 80,000 shares of Common Stock of Eastern referred to in Subdivision (b) of Article I of this Agreement, properly endorsed for transfer, and will deliver to Columbia Oil the resignations of Mr. Henry T. Bush and Mr. Arthur G. Logan as directors of Panhandle.

(b) That they will enter or cause their attorneys to enter into a stipulation reciting that the action brought by the Receivers in the United States District Court for the Southern District of New York, entitled "Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Company, Plaintiffs, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, et al., Defend- [fol. 329] ants," said cause being No. 61-347, has been settled and consenting to the dismissal of said action without costs to any party against the others upon application of any party made without notice, and, in their capacity as Receivers and on behalf of Mo-Kan, will execute and deliver to each of the several defendants in said action good and sufficient releases, in the form of Exhibit C attached hereto, releasing all claims arising out of or in any way appertaining to the subject matter of said action.

(c) That, in their capacity as Receivers and on behalf of Mo-Kan, they will execute and deliver to Columbia Oil, Columbia Gas, Eastern and the corporations or individuals or classes thereof referred to therein, a good and sufficient release, in the form of Exhibit D attached hereto, and will execute and deliver to Burt R. Bay Covenants Not to Sue in the forms attached hereto as Exhibits D-1 and D-2. The Receivers and Columbia Oil, as the holders between them

of the entire capital stock of Eastern, agree that they will cause Eastern to execute and deliver to Columbia Oil, Columbia Gas and the corporations or individuals or classes thereof referred to therein, concurrently with the documents to be delivered as aforesaid, a general release in the form attached hereto as Exhibit E.

(d) That they will procure the ancillary receiver appointed by the District Court of the United States for the Northern District of Illinois, Eastern Division, in the cause entitled "John C. Williamson v. Missouri-Kansas Pipe Line Co., a corporation, et al.," in Equity, said cause being No. 10274, to join with them in the release and Covenants Not to Sue mentioned in the foregoing Subdivision (c) of [fol. 330] this Article III, as authorized by the order of said Court entered on May 14, 1936.

(e) That, when Mo-Kan as a stockholder of Eastern, or the Receivers in its behalf, receive the warrants evidencing rights to subscribe to the 80,000 shares of Common Stock of Eastern, referred to in Subdivision (c) of Article I of this Agreement, Mo-Kan will distribute, or the Receivers will distribute on behalf of Mo-Kan, to such persons as shall present for appropriate notation thereon certificates for Capital Stock of Mo-Kan (which certificates shall either be registered in the names of the persons so presenting them or be duly endorsed and stamped for transfer to such persons) such warrants pro rata except that each Class B share shall be entitled to one-twentieth of the right accorded each share of the Common Stock. That such rights shall not be exercisable by the Receivers or by Mo-Kan but only by the stockholders of Mo-Kan to whom they shall have been distributed or their assignees as above provided, and that all warrants so received by Mo-Kan or the Receivers which shall not have been so distributed shall be allowed to lapse.

(f) That they will not call upon Columbia Oil to purchase any shares of Common Stock of Eastern pursuant to the provisions of Subdivision (i) of Article I of this Agreement except to the extent that the funds so to be provided by Columbia Oil shall be needed for the purpose of paying claims adjudicated in the receivership proceedings and administration fees and expenses allowed by the Chancellor, and that they will not apply any funds so provided by Columbia Oil for any other purposes.

[fol. 331] (g) That they will cooperate with Columbia Oil in causing Eastern and Panhandle to take the action set forth in this Agreement to be taken by Eastern and by Panhandle, respectively.

IV. All of the parties hereto severally agree with each other as follows:

(a) That they will enter into an agreement with Eastern, in the form attached hereto as Exhibit F, for the purpose, among others, of cancelling the certain Agreement, dated September 17, 1930, between Mo-Kan, The National City Company and Columbia Oil (including all modifications of said Agreement) and of any rights and obligations of the parties hereto, Eastern and Mo-Kan which may exist thereunder.

(b) That the action called for by this Agreement shall be taken by the several parties concurrently on or before June 5, 1936, the performance by each party being a condition to the performance by any other party, except as to those actions which this Agreement indicates are to be taken from time to time in the future or at a date subsequent to the delivery of the Common Stock of Eastern and the releases.

In witness whereof, the corporate parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secre-
[fol. 332] taries, and the Receivers have hereunto set their hands and seals, all as of the day and year first above written.

Columbia Oil & Gasoline Corporation, By Charles A. Munroe, President. (Corporate Seal.) Attest: Conrad H. Lavin, Assistant Secretary.

Columbia Gas & Electric Corporation, By E. Reynolds, Jr., President. (Corporate Seal.) Attest: H. H. Pell, Jr., Secretary.

C. Ray Phillips (L. S.). Henry T. Bush (L. S.). Receivers of Missouri-Kansas Pipe Line Company.

[fol. 333] EXHIBIT "A"

General Release

Know All Men by These Presents, that for and in consideration of the sum of One hundred dollars ($100), lawful money of the United States of America, and other good and valuable consideration, to us in hand paid, the receipt whereof is hereby acknowledged, Panhandle Eastern Pipe Line Company. a Delaware corporation, for itself, its subsidiaries, successors and assigns, has remised, released and forever discharged and by these presents does remise, release and forever discharge Columbia Gas & Electric Corporation, a Delaware corporation, Columbia Oil & Gasoline Corporation, a Delaware corporation, and each of them and their respective successors and assigns, and their respective subsidiary corporations, and each of them, and the respective successors and assigns of said subsidiary corporations, and also each and every of such persons as are or have been the officers or directors, present or past, of said Columbia Gas & Electric Corpora-
[fol. 334] tion, said Columbia Oil & Gasoline Corporation and of their respective subsidiary corporations, and their respective heirs, administrators, executors and assigns, of all and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, or by force of any statute of the United States or any state thereof, which against them or any of them said Panhandle Eastern Pipe Line Company or its subsidiaries ever had, now has or which it, its subsidiaries, successors or assigns, hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, except such rights, if any, as said Panhandle Eastern Pipe Line Company may have under (a) the Agreement between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, dated January 31, 1936, (b) the Agreement between Panhandle Eastern Pipe Line Company and Michigan Gas

Transmission Corporation, dated March 17, 1936, and (c) the Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Company, dated as of June 1, 1936, and except such rights, if any, as Panhandle Eastern Pipe Line Company may have against said Michigan Gas Transmission Corporation arising out of current dealings between said Panhandle Eastern Pipe Line Company and said Michigan Gas Transmission Corporation.

[fol. 335] In witness whereof, Panhandle Eastern Pipe Line Company has caused this instrument to be executed by its President or a Vice-President thereunto duly authorized, and its corporate seal to be hereto affixed and attested by its Secretary, this 3rd day of June, 1936, at New York, N. Y.

Panhandle Eastern Pipe Line Company, by —— ——,
Vice-President.

Attest: —— ——, Secretary.

State of New York,
County of New York, ss:

On the 3rd day of June, in the year 1936, before me personally came James L. Harrop, to me known, who, being by me duly sworn, did depose and say that he resided in Maplewood, New Jersey; that he is a Vice-President of Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

——.

[fol. 336] Exhibit "B"

General Release to Receivers

Know All Men by These Presents, that for and in consideration of the sum of One hundred dollars ($100) lawful money of the United States of America, and other good and

valuable consideration, to us in hand paid, the receipt whereof is hereby acknowledged, Panhandle Eastern Pipe Line Company, a Delaware corporation, for itself, its subsidiaries, successors and assigns, has remised, released and forever discharged and by these presents does remise, release and forever discharge Missouri-Kansas Pipe Line Company, a Delaware corporation, and its subsidiaries, successors and assigns, and Henry T. Bush and C. Ray Phillips as Receivers for Missouri-Kansas Pipe Line Company, appointed by the Chancellor of the State of Delaware, on March 18, 1932, and Thurlow G. Essington, as Receiver for Missouri-Kansas Pipe Line Company appointed by the District Court of the United States for the Northern District of Illinois, Eastern Division, on May 12, 1932, and their respective heirs, administrators, executors, successors and assigns, of all and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreement, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, or by force of any statute of the United States or any state thereof, which against them or any of them said Panhandle Eastern Pipe Line Company or its subsidiaries ever had, now has, or which it, its subsidiaries, successors or assigns, hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of [fol. 337] these presents, except such rights, if any, as Panhandle Eastern Pipe Line Company may have under the Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Company, dated as of June 1, 1936.

In Witness Whereof, Panhandle Eastern Pipe Line Company has caused this instrument to be executed by its President or a Vice-President thereunto duly authorized, and its corporate seal to be hereto affixed and attested by its Secretary, this 3rd day of June, 1936, at New York, N. Y.

Panhandle Eastern Pipe Line Company, by —— ——,
Vice-President.

Attest: —— ——, Secretary.

[fol. 338] STATE OF NEW YORK,
County of New York, ss:

On the 3rd day of June, in the year 1936, before me personally came James L. Harrop, to me known, who, being by me duly sworn, did depose and say that he resided in Maplewood, New Jersey; that he is a Vice-President of Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[fol. 339] EXHIBIT C

Release of Suit

Know All Men by These Presents, that for and in consideration of the sum of One Hundred dollars ($100), lawful money of the United States of America, and other good and valuable consideration, to us in hand paid, the receipt whereof is hereby acknowledged, we, Henry T. Bush and C. Ray Phillips, as Receivers for Missouri-Kansas Pipe Line Company, a Delaware corporation, appointed by the Chancellor of the State of Delaware, on March 18, 1932, for ourselves, our heirs, executors, administrators, successors and assigns and for Missouri-Kansas Pipe Line Company, its successors and assigns, have remised, released and forever discharged and by these presents do remise, release and forever discharge Columbia Gas & Electric Corporation, a Delaware corporation, Columbia Oil & Gasoline Corporation, a Delaware corporation, and each of them and their respective successors and assigns, and also Philip G. Gossler, Charles A. Munroe, George H. Howard, Thomas B. Gregory, Thomas R. Weymouth, Edward Reynolds, Jr., Burt R. Bay, John H. Hillman, Jr., and each of them, and their respective heirs, executors, administrators and assigns, of all and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses,

damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, or by force of any statute of the United States or any state thereof which against them or any of them we or Missouri-Kansas Pipe Line Company ever had, now have, or which we, our heirs, [fol. 340] executors, administrators, successors or assigns, or Missouri-Kansas Pipe Line Company, its successors and assigns hereafter can, shall or may have have arising out of or in any way appertaining to the subject matter of a certain suit or action heretofore instituted in the United States District Court for the Southern District of New York entitled "Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Company, Plaintiffs, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, Phillip G. Gossler, Charles A. Munroe, George H. Howard, Thomas B. Gregory, Thomas R. Weymouth, Edward Reynolds, Jr., Burt R. Bay and John H. Hillman, Jr., Defendants," said cause being No. 61-347.

This instrument, or the execution or delivery thereof, shall not operate to discharge or release or otherwise effect any rights or causes of action which we, or Missouri-Kansas Pipe Line Company, may have against any person, firm or corporation, other than the parties hereinabove named or described in favor of whom this release is executed, and all such rights or causes of action against all persons, firms or corporations, other than those above named or described and in favor of whom this release is executed, are hereby expressly reserved to us and to Missouri-Kansas Pipe Line Company. Nothing herein contained, however, shall be deemed to limit the scope or effectiveness of a certain general release, dated June 3, 1936, executed by us to Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, Panhandle Eastern Pipe Line Company and certain individuals and corporations or classes thereof referred to therein.

[fols. 341-342] In Witness Whereof, we have hereunto set our hands and seals this 4th day of June, 1936, at Wilmington, Delaware.

——— (Seal.)

——— (Seal.)

As Receivers of Missouri-Kansas Pipe Line Company appointed by the Chancellor of the State of Delaware.

STATE OF DELAWARE,
County of New Castle, ss:

On this 4th day of June, 1936, before me personally came Henry T. Bush and C. Ray Phillips, to me known and known to me to be the Receivers for Missouri-Kansas Pipe Line Company, a Delaware corporation, appointed by the Chancellor of the State of Delaware on March 18, 1932, and the individuals described in and who executed the foregoing instrument, and they duly acknowledged to me that they executed the same as such Receivers.

[fol. 343] EXHIBIT "F"

General Release to Panhandle Eastern Pipe Line Company

Know All Men by These Presents, that for and in consideration of the sum of One Hundred dollars ($100), lawful money of the United States of America, and other good and valuable consideration, to us in hand paid, the receipt whereof is hereby acknowledged, we, Columbia Gas & Electric Corporation, a Delaware corporation, and Columbia Oil & Gasoline Corporation, a Delaware Corporation, for ourselves, our subsidiaries, successors and assigns, have remised, released and forever discharged and by these presents do remise, release and forever discharge Panhandle Eastern Pipe Line Company, a Delaware corporation, and its successors and assigns, and its subsidiary corporations, and each of them, and the respective successors and assigns of said subsidiary corporations, of all and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, or by force of any statute of the United States or any state thereof, which against them or any of them, we, or any of us, ever had, now have, or which we, our subsidiaries, successors or assigns, hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, except such rights, if any, as we, or any of us, may have under the Agreement between Panhandle Eastern Pipe Line Company, Columbia Gas &

Electric Corporation and Columbia Oil & Gasoline Corporation, dated January 31, 1936, and under the Agreement [fol. 344] between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, dated March 17, 1936, and under the Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and Henry T. Bush and C. Ray Phillips as Receivers of Missouri-Kansas Pipe Line Company, dated as of June 1, 1936, and except such rights, if any, as said Michigan Gas Transmission Corporation may have against said Panhandle Eastern Pipe Line Company arising out of current dealings between said Michigan Gas Transmission Corporation and said Panhandle Eastern Pipe Line Company.

In Witness Whereof, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation have caused this instrument to be executed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, this 3rd day of June, 1936, at New York, N. Y.

Columbia Gas & Electric Corporation, by —— ——,
President.

Attest: —— ——, Secretary.

Columbia Oil & Gasoline Corporation, by —— ——,
President.

Attest: —— ——, Assistant Secretary.

[fol. 345-346] State of New York,
County of New York, ss:

On the 3rd day of June, in the year 1936, before me personally came E. Reynolds, Jr., to me known, who, being by me duly sworn, did depose and say that he resided in Stamford, Connecticut; that he is the President of Columbia Gas & Electric Corporation, a corporation of the State of Delaware, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like orders.

—— ——.

STATE OF NEW YORK,
County of New York, ss.:

On the 3rd day of June, in the year 1936, before me personally came Charles A. Munroe, to me known, who, being by me duly sworn, did depose and say that he resided in Chicago, Illinois; that he is the President of Columbia Oil & Gasoline Corporation, a corporation of the State of Delaware, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like orders.

[fol. 347] EXCERPTS FROM EXHIBIT "L" TO REPORT

Minutes of a Special Meeting of the Board of Directors of Panhandle Eastern Pipe Line Company, held at No. 80 Broad Street, New York, N. Y., at 11:30 o'clock A. M. on Tuesday, March 24, 1936, pursuant to due notice.

Present: Messrs. Joseph A. Bower, Henry T. Bush, Gano Dunn, James L. Harrop, William P. Philips and O. Ray Phillips,

being a majority of the Directors and constituting a quorum.

The President, Mr. William P. Philips, presided, and Mr. Leith V. Watkins, Secretary of the Company, acted as secretary of the meeting.

The Secretary stated that notice of the meeting had been mailed to each Director at least 5 days before the time fixed for the meeting.

. . . . . .

[fol. 348] Declaration of Stock Dividend

The Chairman stated that, as contemplated by the Certificate of Amendment of the Certificate of Incorporation of this Company filed February 6, 1936, it would be in order to increase the number of outstanding shares of stock of the Company to 648,652 shares, through the issue of 646,354 additional shares of Common Stock as a stock dividend.

After discussion, on motion duly made and seconded, it was unanimously

Resolved that a stock dividend of 646,354 shares of Common Stock be and hereby is declared upon the outstanding Common Stock of this Company, payable on March 25, 1936, out of the authorized and unissued Common Stock of this Company, to the holders of record of such outstanding Common Stock as of the close of business on March 24, 1936.

The Chairman then stated that Section 35 of the Delaware General Corporation Law requires that the Board of Directors, in connection with the declaration of a dividend payable in shares of stock without par value, fix the price [fol. 349] at which such shares shall be issued. Thereupon, on motion duly made and seconded, it was unanimously

Resolved that the shares of Common Stock without par value of this Company which shall be issued in payment of the stock dividend declared by the foregoing resolution shall be deemed to have been issued at the total price of $15,017,300 payable out of the surplus of the Company, and that the officers of this Company be and hereby are directed to transfer on the books of this Company from surplus to capital account, when and as such stock shall be issued, the sum of $15,017,300.

Issue of Subscription Rights

The Chairman recommended that, pursuant to Subdivision (d) of Section 1 of the Agreement dated January 31, 1936, between this Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, the Company offer to the holders of its Common Stock, without nominal or par value, 160,000 additional shares of Common Stock (being part of the now authorized but unissued Common Stock of the Company) for subscription by said holders in proportion to their several holdings of Common Stock, at the price of $25.00 per share, payable April 1, 1936. After discussion, on motion duly made and seconded, it was unanimously

Resolved that this Company offer to the holders of its Common Stock of record at the close of business March 26, 1936, the privilege of subscribing after said date and up to the close of business on April 1, 1936, for 160,000 shares

of the Common Stock of this Company at the price of $25.00 [fol. 350] per share, in amounts in proportion to their several holdings of Common Stock in this Company, the subscription price to be paid in full on or before April 1, 1936, such rights to be assignable only if the consent of this Company is obtained thereto;

Resolved that all shares of Common Stock so to be issued shall be issued as fully paid and non-assessable;

Resolved that all of the consideration so received by this Company for the issue of such additional shares of Common Stock shall be credited to Capital; and

Resolved that the officers of this Company be and hereby are authorized and directed to take any and all action necessary or proper to carry the purposes of the foregoing resolutions fully into effect.

The Chairman submitted a form of letter to the holders of the Common Stock of this Company, offering them the subscription rights hereinabove authorized. Said form of letter was as follows:

Panhandle Eastern Pipe Line Company

(Two separate letters)

Mr. Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation, appointed pursuant to Decree dated January 29, 1936, in Cause No. 1099 in Equity in the District Court of the United States for the District of Delaware, 80 Broad Street, New York, N. Y.

Ottiwell & Co., c/o Chemical Bank & Trust Company, 165 Broadway, New York, N. Y.

[fol. 351] Dear Sir(s):

The Board of Directors of Panhandle Eastern Pipe Line Company, at its meeting held March 24, 1936, authorized the offering of 160,000 shares of Common Stock of the Company for subscription, at the price of $25.00 per share, by the holders of the Common Stock of record at the close of business March 26, 1936, in amounts in proportion to their several holdings of Common Stock in the Company. These rights are only assignable if the consent of Panhandle Eastern Pipe Line Company is obtained thereto.

As holder of record of one-half of the outstanding Common Stock of this Company, you are hereby given the right

to subscribe, on or before the close of business on April 1, 1936, for 80,000 additional shares of Common Stock of this Company, at said price of $25.00 per share.

Payment of your subscription should be made in New York funds, payable to the order of Panhandle Eastern Pipe Line Company, at Room 3026, 61 Broadway, New York, N. Y.

Yours very truly, Panhandle Eastern Pipe Line Company by —— ——, Vice-President.

On motion duly made and seconded, it was unanimously

Resolved that the form of letter to the holders of Common Stock of this Company, offering them the right to subscribe [fol. 352] for an aggregate of 160,000 shares of additional Common Stock of this Company, at the price of $25.00 per share, which has been submitted to this meeting, be and hereby is approved, and that the President or any Vice-President of this Company be and hereby is authorized to execute and deliver to each of the holders of record of Common Stock of this Company a letter in substantially said form; and that the officers of this Company be and hereby are authorized to take from time to time any and all action necessary or proper to carry the purposes of said letter fully into effect.

The Chairman called attention to the fact that, pursuant to subdivision (a) of Section 3 of the Agreement dated January 31, 1936, between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, Columbia Oil & Gasoline Corporation was obligated to subscribe immediately for its pro rata share of the additional stock and, on April 2, 1936, either (a) purchase such of the shares of Common Stock so offered for subscription as shall not have been subscribed for by other stockholders, or (b) if the time for the payment of subscriptions shall have been extended to a date later than April 1, 1936, to advance to this Company the amount that would be payable if all of the subscriptions to such shares of Common Stock which may be exercised later than April 1, 1936, had been exercised, the portion of such advance represented by subscription rights later exercised to be repaid by this Company, with interest at the rate of 6% per annum, upon the exercise of such subscription rights. He stated that the effect of carrying out

these provisions would be to provide $4,000,000 by April 2, 1936, which was more than this Company's immediate cash [fol. 353] requirements, and that it would be desirable to defer the receipt by this Company of the $2,000,000 to be represented by subscriptions other than that made directly by Columbia Oil & Gasoline Corporation, in order to save this Company the 6% interest charge. He then submitted to the meeting a proposed form of agreement with Columbia Oil & Gasoline Corporation providing for the extension of the time within which subscriptions might be made by owners other than Columbia Oil & Gasoline Corporation and for the deferment of the advances to be made by Columbia Oil & Gasoline Corporation in anticipation of such subscriptions. Said proposed agreement was as follows:

Panhandle Eastern Pipe Line Company

Columbia Oil & Gasoline Corporation, 61 Broadway, New York, N. Y.

Dear Sirs:

The Board of Directors of Panhandle Eastern Pipe Line Company, at its meeting held March 24, 1936, authorized the offering of 160,000 additional shares of common stock of the Company for subscription, at the price of $25.00 per share, by the holders of the Common Stock of record at the close of business, March 26, 1936, in amounts in proportion to their several holdings of Common Stock in the Company.

As beneficial owner of the 324,326 shares of Common Stock of this Company, now held of record by Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation, appointed pursuant to Decree dated January 29, 1936, in Cause No. 1099; in Equity in the District Court of the United States for the District of Delaware, you are required, pursuant to Subdivision (a) of Section 3 of the [fol. 354] Agreement dated January 31, 1936 between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation, and Columbia Oil & Gasoline Corporation, to subscribe immediately for 80,000 shares, being your pro rata proportion of the additional shares now offered for subscription. Inasmuch as the $2,000,000 which we shall receive through this subscription will be sufficient to meet our immediate cash requirements, we propose the following:

1. The undersigned will extend the time for the exercise of the subscription rights in respect of the 324,326 shares

of Common Stock standing in the name of Ottiwell & Co. from April 1, 1936 to January 1, 1937, subject to the right of the Board of Directors of this Company to reduce the period of such extension to such date as it may see fit on not less than fifteen days' written notice to the record holder of such stock, provided that, if your offer dated January 31, 1936 to the Receivers of Missouri-Kansas Pipe Line Company shall have been accepted or shall still be pending, such reduction of time shall not be in conflict with the terms of such offer.

2. On your request, the undersigned will issue to its stockholders who shall not have subscribed for the shares of Common Stock so offered to them, transferable subscription warrants, in form satisfactory to you and in such denominations as you may request.

3. In order that we may save all or a part of the 6% interest charge referred to in said Subdivision (a) of Section 3 of said Agreement dated January 31, 1936, and in order that we may receive the funds required for construction as needed, you will agree to advance to the undersigned the amount that would have been payable if all of the subscrip-
[fol. 355] tions to additional shares of Common Stock of the undersigned had been exercised on April 1, 1936, from time to time and in such amounts as the officers of the undersigned may, on not less than ten days' notice in each case, request.

If this arrangement is satisfactory to you, kindly confirm your acceptance at the foot of the enclosed copy of this letter.

Very truly yours, Panhandle Eastern Pipe Line Company, by —— ——, Vice-President.

Accepted: Columbia Oil & Gasoline Corporation, by ——, President.

After discussion, on motion duly made and seconded, it was unanimously

Resolved that the form of agreement with Columbia Oil & Gasoline Corporation which has been submitted to this meeting be and hereby is approved and that the officers of this Company be and hereby are authorized and directed to execute, in the name and on behalf of this Company, and to deliver to Columbia Oil & Gasoline Corporation, an agree-

ment in substantially said form, and to take from time to time any and all action necessary or proper to carry the purposes of said agreement and of this resolution fully into effect.

[fol. 356] The Chairman then submitted a form of letter to Ottiwell & Co., the holder of one-half of this Company's outstanding Common Stock, providing for the extension of the time in which to exercise its subscription rights and providing for the issuance, when required, of transferable subscription warrants. Said form of letter was as follows:

Panhandle Eastern Pipe Line Company

Ottiwell & Co., % Chemical Bank & Trust Co., 165 Broadway, New York, N. Y.

Dear Sirs:

There is enclosed herewith a notice of an offering of rights to subscribe for additional shares of Common Stock of Panhandle Eastern Pipe Line Company.

Although said notice calls for the payment of subscriptions on or before April 1, 1936, the Board of Directors of this Company has authorized an extension of the time within which your subscription may be made to January 1, 1937, subject to the right of the Board of Directors to reduce the period of such extension to such date as it may see fit, on not less than fifteen days' written notice to you.

Yours very truly, Panhandle Eastern Pipe Line Company, by —— ——, Vice-President.

On motion duly made and seconded, it was unanimously

Resolved that the form of letter to Ottiwell & Co. which has been submitted to this meeting be and hereby is ap-[fol. 357] proved, and that the President or a Vice-President of this Company be and hereby is authorized and directed to execute and deliver a letter to Ottiwell & Co. in substantially said form; and that the officers of this Company be and hereby are authorized and directed to take from time to time any and all action necessary or proper to carry the purposes of said agreement and of this resolution fully into effect.

* * * * * * *

[fol. 358] Minutes of a Special Meeting of the Board of Directors of Panhandle Eastern Pipe Line Company, held at No. 80 Broad Street, New York, N. Y., at 11:00 o'clock A. M., on Tuesday, April 7, 1936, pursuant to due notice.

Present: Messrs. Joseph A. Bower, Henry T. Bush, Gano Dunn, James L. Harrop, Ashton W. Hawkins, William P. Philips and C. Ray Philips, being a majority of the Directors and constituting a quorum.

The President, Mr. William P. Philips, presided, and Mr. Leith V. Watkins, Secretary of the Company, acted as secretary of the meeting.

The Secretary stated that notice of the meeting had been mailed to each Director at least 5 days before the time fixed for the meeting.

* * * * * * *

[fol. 359] Subscription Rights: Columbia Oil and Gasoline Corporation, as beneficial owner of Common Stock of this Company, held by Gano Dunn, as Trustee for Columbia Oil & Gasoline Corporation, under the Decree of January 29, 1936, instructed the Trustee to exercise the subscription rights granted at a meeting of this Board held March 24, 1936, and this was done on April 1st by the purchase of 80,000 shares of Common Stock at the price of $25.00 per share.

* * * * * * *

[fol. 360] Minutes of a Special Meeting of the Board of Directors of Panhandle Eastern Pipe Line Company, held at No. 80 Broad Street, New York, N. Y., at 2:45 o'clock P. M. on Tuesday, May 5, 1936, pursuant to due notice.

Present: Messrs. Joseph A. Bower, Henry T. Bush, Gano Dunn, James L. Harrop, Ashton W. Hawkins, F. Cliffe Johnston, Dean Mathey, William P. Philips and C. Ray Phillips, being all of the Directors and constituting a quorum.

[fol. 361] The President, Mr. William P. Philips, presided, and Mr. Leith V. Watkins, Secretary of the Company, acted as secretary of the meeting.

The Secretary stated that notice of the meeting had been mailed to each Director at least 5 days before the time fixed for the meeting.

* * * * * * *

[fol. 362] Report of Approval of Offer made by Columbia Oil & Gasoline Corporation to Receivers of Missouri-Kansas Pipe Line Company

The Secretary reported that on April 29, 1936 the Chancellor in the Court of Chancery of the State of Delaware in and for New Castle County, Delaware had issued an order approving an Offer made by Columbia Oil & Gasoline Corporation to the Receivers of Missouri-Kansas Pipe Line Company, dated January 31, 1936, as supplemented March 5, 1936 and as modified April 22, 1936. A copy of said order was as follows:

Marvel, Morford, Ward & Logan,
Delaware Trust Building,
Wilmington, Delaware

April 29, 1936.

Columbia Gas and Electric Corporation, Columbia Oil and Gasoline Corporation, 61 Broadway, New York, New York.

GENTLEMEN:

In re: R. H. McWilliams Co. vs. Missouri-Kansas Pipe Line Company, et al. Consolidated and Constituent Causes

This is to advise you that Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Com-
[fol. 363] pany, presented your offer dated January 31, 1936, as supplemented by your letter of March 5, 1936, and as modified by their letter to you of April 22, 1936, setting forth certain modifications which had been agreed to by you, to the Chancellor of the State of Delaware at the adjourned hearing on Thursday, April 23, 1936, in the above-captioned proceedings, and recommended that he enter an order directing them to accept the offer as so modified. This is to notify you that the Chancellor approved the offer as so modified and entered an order dated the 29th day of April, A. D. 1936, authorizing and directing said Receivers to accept the offer as so modified. Enclosed herewith is a copy of the order entered by the Chancellor.

The Receivers are now prepared and authorized to join with you in carrying the offer as so modified into effect, and, to the extent necessary, hereby accept the offer as so modified.

Yours truly, Henry T. Bush and C. Ray Phillips, Receivers of Missouri-Kansas Pipe Line Company, by Marvel, Morford, Ward & Logan, Their Attorneys.

AGL/MB. Enc.

[fol. 364] IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE, IN AND FOR NEW CASTLE COUNTY

Consolidated Cause

R. H. McWILLIAMS, JR. CO., INC., Complainant,

vs.

MISSOURI-KANSAS PIPE LINE COMPANY, a Corporation, FRANK P. PARISH & Co., a Corporation, Kentucky Natural Gas Company, a Corporation, and Indiana Kentucky Natural Gas Corporation, a Corporation, Respondents

Receivership Cause

R. H. McWILLIAMS, JR. CO., INC., Complainant,

vs.

MISSOURI-KANSAS PIPE LINE COMPANY, a Corporation, FRANK P. PARISH & Co., a Corporation, Kentucky Natural Gas Company, a Corporation, and Indiana Kentucky Natural Gas Corporation, a Corporation, Respondents

[fol. 365] Constituent Causes

PEOPLES-PITTSBURGH TRUST COMPANY, as Trustee under the Collateral Trust Indenture, dated March 15, 1931, of Missouri-Kansas Pipe Line Company, Complainant,

vs.

MISSOURI-KANSAS PIPE LINE COMPANY, HENRY T. BUSH and C. Ray Phillips, Receivers of Missouri-Kansas Pipe Line Company, Defendants

And now, to-wit this 29th day of April, A. D. 1936, the above-captioned cause having come on to be heard pursuant

to the order entered herein on the 9th day of March, A. D. 1936, upon the petitions of Frank P. Parish and Dupuy G. Warrick and Colony Realty & Investment Company, et al., praying, inter alia, that Henry T. Bush and C. Ray Phillips, Receivers of Missouri-Kansas Pipe Line Company, be directed to accept a certain offer from Columbia Oil and Gasoline Corporation and Columbia Gas and Electric Corporation, set forth in a certain letter from said corporations to said Receivers, dated January 31, 1936, as supplemented by a letter from said corporations, dated the 5th day of March, A. D. 1936, copies of both whereof are annexed to said petition of Frank P. Parish and Dupuy G. Warrick;

And said hearing having been duly adjourned from the 15th day of April, A. D. 1936, to the 23rd day of April, [fol. 366] A. D. 1936, and having come on to be heard further upon said petitions above mentioned, and also upon the petition of Henry T. Bush and C. Ray Phillips, Receivers as aforesaid, filed in this cause on the 23rd day of April, A. D. 1936, praying that they be authorized to accept said offer above referred to, as theretofore supplemented and as modified by a letter from said Receivers to said corporations, dated the 22nd day of April, A. D. 1936, and accepted by said corporations, a copy of which said letter is annexed to said petition of said Receivers filed herein on the 23rd day of April, A. D. 1936, as Exhibit "A" thereto;

And it appearing to the Chancellor that said offer, as supplemented and modified as aforesaid, proposes a final settlement of certain differences and disputes between the receivership estate and Missouri-Kansas Pipe Line Company, on the one hand, and said Columbia Oil and Gasoline Corporation and Columbia Gas and Electric Corporation and others on the other hand;

And it further appearing to the Chancellor that due notice of said hearing was given by the Register in Chancery to Stockholders and creditors of Missouri-Kansas Pipe Line Company, pursuant to the provisions of the order in that behalf entered on March 9, 1936, and the matter having been fully heard upon oral testimony taken at said hearings and upon certain other testimony heretofore taken in this cause relating to a previous offer of the settlement of said disputes and differences, and upon exhibits duly offered and received in evidence, and all parties in interest having been fully heard, and no party in interest having appeared in opposition to the prayers of the Receivers' petition of April

23, 1936, and Robert W. Woolley, Franklin B. Richards and Hubert E. Howard, as the New York Protective Committee for Stockholders of Missouri-Kansas Pipe Line Company, and Alfred B. Haake, George B. Knepper, Jeff W. Handy, [fol. 367] O. W. Kirkpatrick and Fred F. Wilkison, as the Chicago Stockholders Protective Committee of Missouri-Kansas Pipe Line Company, and W. G. Maguire, as an individual stockholder, having assented to the entry of an order in accordance with the prayers of said petition of the Receivers, it is, upon motion of Arthur G. Logan, Esq., solicitor for said Receivers,

Ordered by the Chancellor:

1. The said offer of said Columbia Oil and Gasoline Corporation and Columbia Gas and Electric Corporation, as set forth in the letters hereinabove mentioned, is approved as fair and reasonable and in the best interests of the receivership estate and of Missouri-Kansas Pipe Line Company and its creditors and stockholders, and said Receivers are hereby authorized and directed to accept said offer, as supplemented and modified as above set forth.

2. Said receivers are hereby authorized and directed to execute and consummate said settlement embodied in said offer, as supplemented and modified, and to that end are authorized and directed to take all steps necessary in connection therewith and to execute and deliver such releases, contracts, assignments and other instruments of writing as may be necessary, convenient or proper in order to carry out the terms and conditions of said offer, as supplemented and modified, and the acceptance thereof, and as may be approved by their counsel.

3. The hearing hereinabove referred to is hereby adjourned until the 29th day of May, A. D. 1936, for the purpose of determining the number of shares of the common stock of Panhandle Eastern Pipe Line Company which Henry T. Bush and C. Ray Phillips, as Receivers of Mis- [fol. 368] souri-Kansas Pipe Line Company, shall be authorized to sell pursuant to the provisions of paragraph 4 (b) of said letter of April 22, 1936, (Exhibit "A" to the petition of April 23, 1936, of said Receivers) in order to raise money to pay claims adjudicated herein and administration fees and expenses allowed herein and for such other purposes as this Court shall determine, and in order that such

determination may be made all parties in interest claiming to be entitled thereto are hereby directed to file their petitions for compensation for services and allowances for their expenses and services of their counsel, therein stating generally the services rendered by the petitioner and his counsel, on or before the 29th day of May, A. D. 1936.

* * * * * * *

[fol. 369] Minutes of a Special Meeting of the Board of Directors of Panhandle Eastern Pipe Line Company, held at No. 80 Broad Street, New York, N. Y., at 2:45 o'clock P. M. on Tuesday, May 19, 1936, pursuant to due notice.

Present: Messrs. Joseph A. Bower, Henry T. Bush, Gano Dunn, James L. Harrop, Ashton W. Hawkins, F. Cliffe Johnston, Dean Mathey, William P. Philips and C. Ray Phillips, being all of the Directors and constituting a quorum.

[fol. 370] There was also present during a part of the meeting, Mr. Edward N. Goodwin, General Counsel for the Company.

The President, Mr. William P. Philips, presided, and Mr. Leith V. Watkins, Secretary of the Company, acted as secretary of the meeting.

The Secretary stated that notice of the meeting had been mailed to each Director at least 5 days before the time fixed for the meeting.

Approval of Minutes

* * * * * * *

Settlement Between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and Receivers of Missouri-Kansas Pipe Line Company

The Chairman referred to the report made to this Board at its meeting held May 5, 1936, with reference to the order [fol. 371] entered by the Court of Chancery of the State of Delaware on April 29, 1936, directing the Receivers of Missouri-Kansas Pipe Line Company to accept and carry out the offer of settlement of Columbia Oil & Gasoline Corporation dated January 31, 1936, as supplemented and modified. He explained why it would be advantageous to Panhandle Eastern Pipe Line Company as well as to Columbia Oil & Gasoline Corporation and the Receivers of Missouri-Kansas Pipe Line Company, the sole beneficial stockhold-

ers of this Company, for the Company to take the corporate action on its part necessary to carry out the terms of said settlement. He submitted to the meeting copies of the offer of Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation to the Receivers, dated January 31, 1936; the letter dated March 5, 1936, from Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation to Frank P. Parish and Dupuy G. Warrick; and the letter dated April 22, 1936, from the Receivers to Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation, accepted by the latter two corporations, copies of which are as follows:

Columbia Oil & Gasoline Corporation

Sixty-One Broadway

New York

January 31, 1936.

Messrs. Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Company, Wilmington, Delaware.

Dear Sirs:

You are familiar with the relations which have heretobefore existed between Missouri-Kansas Pipe Line Com- [fol. 372] pany, yourselves as Receivers thereof, Panhandle Eastern Pipe Line Company, Panhandle Corporation, Columbia Gas & Electric Corporation and the undersigned Columbia Oil & Gasoline Corporation, and particularly with the differences of opinion which have existed between the Missouri-Kansas interests on the one hand and the interests of Columbia Gas & Electric Corporation and the undersigned on the other with respect to the management and affairs of Panhandle Eastern Pipe Line Company. The principal disagreement has arisen out of the problem of marketing Panhandle Eastern's available gas.

As the result of the contract dated August 31, 1935, between Panhandle Eastern Pipe Line Company and Detroit City Gas Company, under which Panhandle Eastern is afforded the opportunity to supply the City of Detroit with natural gas, the principal point of our controversy, namely, the marketing of Panhandle Eastern's gas, would seem to be removed inasmuch as this market should absorb all of

the gas which we believe Panhandle Eastern can now safely contract to supply at such distance from its production area.

After a comprehensive study and extensive negotiations, we believe that, with this contract as a foundation, an opportunity is afforded to adjust the controversies heretofore existing between Missouri-Kansas interests and ours on terms we believe manifestly advantageous to your interests, and which at the same time would permit the financial rehabilitation of Panhandle Eastern and would materially strengthen the financial position of Missouri-Kansas.

We enclose a copy of the contract of August 31, 1935, between Panhandle Eastern and Detroit City Gas Company. You will observe this contract provides for the sale of gas by Panhandle Eastern to Detroit City Gas Company for a firm period of fifteen years on terms which we believe you will agree to be highly advantageous to Panhandle Eastern. [fol. 373] The contract provides for delivery of natural gas at a point near the City of Detroit. Panhandle Eastern's pipe line system extends only to the Illinois-Indiana State line and its present capacity is not sufficient to transport the volume of gas that may be required under the Detroit Contract. It is estimated that the cost of the necessary increase in the capacity of the existing pipe line, with additional compressor stations and necessary equipment, will be approximately $8,600,000 and that the cost of building or acquiring an extension to Detroit will be approximately $8,300,000 more.

At the present time, as you know, the outstanding securities of Panhandle Eastern are held as follows:

Securities	Columbia Oil	Owned by Panhandle Corporation *
6% Mortgage Bonds	$18,200,000	
6% Promissory Notes	4,945,500	$4,945,500
Common Stock	1,149 sh.	1,149 sh.

* At the present time Panhandle Corporation has outstanding $4,940,000 of Two-Year 6% Collateral Trust Notes (now in default as to principal and interest), which Notes are now held by others, and which are guaranteed as to principal and interest by Missouri-Kansas. Missouri-Kansas now owns 25% of the Common Stock of Panhandle Cor-

The Panhandle Eastern Notes aggregating $9,891,000 have long been in default as to interest, which default entitles the holders of such Notes to call on the Trustee to accelerate their maturity and also constitutes an event of default under the mortgage securing the Bonds. Furthermore the $4,945,500 of Panhandle Eastern Notes, as well as all the shares of Panhandle Eastern Common Stock, [fol. 374] owned by Panhandle Corporation are now pledged to secure the $4,940,000 principal amount of defaulted Two-Year 6% Collateral Trust Notes issued by Panhandle Corporation mentioned above.

It would seem manifestly impractical under present conditions for Panhandle Eastern to refund its present defaulted obligations, much less to finance the necessary capital expenditures amounting (exclusively of the investment in the extension to Detroit) to approximately $8,600,000 in new money, except through those already having a financial interest in its securities. Furthermore, such financing, even under favorable conditions, is costly. Under the proposal stated below, this financing would be done without cost to Panhandle Eastern or Missouri-Kansas, the entire cost of financing being borne by Columbia Gas & Electric Corporation and ourselves.

Without prejudice either to the claims asserted in your suit against us or to our contention that such claims are groundless, we believe that with your cooperation a formal contract embracing the following plan, which we and Columbia Gas & Electric Corporation are able and willing and hereby offer to enter into, would provide a satisfactory compromise of our conflicting claims:

(1) We would agree to fund the entire issue of outstanding 6% Promissory Notes of Panhandle Eastern into 6% Preferred Stock in the amount and of the character hereinafter stated. This would be accomplished in connection with our acquisition, as hereinafter explained, of substantially all of the Notes and the 75% of the stock of Panhandle Corporation held by others.

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poration, the remaining 75% of the Common Stock being owned by others; so that at the present time Missouri-Kansas' interest in Panhandle Corporation is the ownership of 25% of the Common Stock, the value of which is subject to the $4,940,000 defaulted Notes of Panhandle Corporation, which in turn are guaranteed by Missouri-Kansas.

(2) We would further agree to cause Panhandle Eastern to be recapitalized as hereinafter more fully set forth, and [fol. 375] to cause Missouri-Kansas to regain its direct ownership of one-half of the Common Stock of Panhandle Eastern to be issued and outstanding prior to the new financing mentioned in paragraph (6) below.

(3) We would cancel the guaranty by Missouri-Kansas of the principal and interest of the Panhandle Corporation Notes, now amounting to more than $5,500,000, and would release Missouri-Kansas of all liability on this guaranty.

(4) The claim of Panhandle Eastern and its subsidiaries against Missouri-Kansas in the sum of $42,606.74 would be cancelled.

(5) We would agree to pay to you, as Receivers of Missouri-Kansas, the sum of $300,000 in cash, to be applied toward the expenses of the receivership and liquidating other obligations of Missouri-Kansas.

(6) The additional financing necessary to provide funds needed by Panhandle Eastern (estimated at approximately $8,600,000) would be provided by an issue of 160,000 shares of Common Stock of Panhandle Eastern, to be sold at $25 per share (producing $4,000,000), to which Missouri-Kansas stockholders would be given the right to subscribe for one-half but would not be obligated to subscribe, we agreeing to take the entire balance not so subscribed; the remainder of the necessary funds (not to exceed $4,600,000) Columbia Gas & Electric Corporation would agree to supply by the purchase at par of 6% Bonds of Panhandle Eastern.

(7) In order to minimize the financial burden on Panhandle Eastern, we and Columbia Gas & Electric Corpora- [fol. 376] tion would agree to cause to be financed and constructed the necessary pipe line extension to the city gate at Detroit, without cost or expense or financial obligation of any kind on Panhandle Eastern. The existing pipe line at present owned by Indiana Gas Transmission Corporation (a subsidiary of the undersigned) and representing a cash investment of more than $1,500,000, would be used as far as a point near Zionsville, Indiana; and Michigan Gas Transmission Corporation (a subsidiary of Columbia Gas & Electric Corporation) would construct and own a pipe

line from that point to the Place of Delivery specified in the Detroit contract at a cost now estimated at about $6,780,000. Contracts would be entered into whereby Panhandle Eastern would deliver to Michigan Gas Transmission Corporation (either directly or through the intervention of Indiana Gas Transmission Corporation) and Michigan Gas Transmission Corporation would in turn deliver to Detroit City Gas Company, all of the gas required for delivery under the Detroit Contract. Our engineers have calculated that, at the rates contemplated in these contracts, Panhandle Eastern would receive an average price of about 26½ cents per MCF when the line operates at 70% load factor, and that these rates would produce, for the companies involved, an equitable apportionment of the net earnings to be derived from the Detroit Contract.

(8) In consideration of the taking of the foregoing action by us and by Columbia Gas & Electric Corporation, you would agree

(a) To dismiss the suit brought by you in the United States District Court for the Southern District of New York on July 18, 1935, and execute a general release, as hereinafter more fully set forth;

[fol. 377] (b) To distribute to Missouri-Kansas stockholders, in the manner hereinafter set forth, the warrants evidencing the right to subscribe for additional Common Stock of Panhandle Eastern which you or Missouri-Kansas would receive as a stockholder in Panhandle Eastern;

(c) To join with us, Columbia Gas & Electric Corporation and Panhandle Eastern in an agreement for the cancellation of the contract dated September 17, 1930 between Missouri-Kansas, The National City Company and the undersigned, including specifically the provisions thereof with respect to the purchase or sale of gas or the execution of gas contracts; and

(d) To join with us in taking appropriate corporate action to liquidate Panhandle Corporation in such manner that through such liquidation you would receive one-half of the Common Stock of Panhandle Eastern and we would receive the Preferred Stock.

The following is a more detailed explanation and discussion of the several steps involved in this plan and of the reasons underlying its various provisions.

As stated above, the securities of Panhandle Eastern at present owned by Panhandle Corporation are pledged to secure its $4,940,000 of Two-Year 6% Collateral Trust Notes, which are now in default. Panhandle Corporation has outstanding 1,000 shares of capital stock, of which you, as Receivers, hold 250 shares. We have made offers to the holders of the other 750 shares of stock and to the holders of the Notes to acquire such stock and Notes, subject to certain conditions, and these offers have been accepted by the holders of the 750 shares of stock and by the holders of over 97% of the Notes. As part of this purchase [fol. 378] price we are giving up approximately $3,613,500 of Panhandle Eastern Bonds. We propose that, if we acquire these Notes and stock, Panhandle Corporation be dissolved and liquidated in such manner that you receive Panhandle Corporation's half of the Common Stock of Panhandle Eastern. In connection with this liquidation we would cause Panhandle Corporation to satisfy such of its Two-Year 6% Collateral Trust Notes as we shall not have acquired, and we, as holders of the remainder of said Notes, would in this general plan release the guaranty by Missouri-Kansas of the principal and interest thereof. The accomplishment of this liquidation in the most expeditious manner would require your cooperation with us in the taking of the appropriate corporate action.

It is proposed that Panhandle Eastern be recapitalized so that its outstanding securities (before the additional financing required to increase the capacity of its pipe line) would consist of $18,200,000 principal amount (subject to reduction by operation of the sinking fund) of First Mortgage Bonds, $11,000,000 par value of Preferred Stock and such number of shares of Common Stock without par value as would have an initial book value of approximately $25 per share after making certain adjustments hereinafter specified.

The First Mortgage Bonds would be the existing Twenty-Year Sinking Fund Mortgage Bonds, Series A, 6%, issued under the Mortgage Trust Indenture dated as of October 1, 1930, amended in the general respects (except as to interest and sinking fund provisions) set forth in the plan of

Readjustment of Funded Debt and Capitalization dated March 12, 1934, with which you are familiar. They would mature October 1, 1940, would bear interest at the rate of 6% per annum and would be subject to a cumulative sinking fund calculated to equal the principal amount of the [fol. 379] entire issue over the fifteen-year firm period of the Detroit Contract.

The $11,000,000 par value of Preferred Stock, which the plan contemplates we are to receive, is intended to reflect approximately the amount of investment which we would by then have made in the securities of Panhandle Eastern junior to the Bonds, in excess of the investment made by Missouri-Kansas. This would include the cost to us of the one-half of the 6% Promissory Notes and additional Common Stock of Panhandle Eastern which we acquired directly from Panhandle Eastern and the cost to us (payable in Bonds and cash) of the Notes and 75% of the stock of Panhandle Corporation (both purchased at substantially below issue prices), an advance to Panhandle Corporation to pay its obligations other than the Notes, and the $300,000 cash which we have been asked to provide, and which we are willing to provide, for your use toward meeting the expenses of the receivership of Missouri-Kansas and the settlement of claims against it.

The Preferred Stock would have a par value of $100 per share; would be entitled to dividends at the rate of 6% per annum, dividends to be cumulative only to the extent earned (depreciation and depletion being taken at no increase over the current rate) until December 31, 1936; thereafter to be fully cumulative; would be redeemable at any time in whole or in part at 110% plus accrued dividends (the premium to be waived in case of partial redemption from time to time out of earnings so long as the undersigned or Columbia Gas & Electric Corporation or their respective subsidiaries or affiliates own said stock); and would be entitled to full voting rights, share for share with the Common Stock; and each share would be convertible at the option of the holder into four shares of Common Stock at any time up to the date of redemption. While any of the Preferred Stock remains outstanding there must be set aside from earnings each year 4% of tangible property [fol. 380] account to provide for depreciation, depletion and

amortization of investment before payment of dividends on the Common Stock.

The Common Stock would consist of such number of shares without par value as would have a book value of approximately $25 per share, such book value to be determined in the following manner: the consolidated balance sheet of Panhandle Eastern and subsidiaries as of December 31, 1935 would be adjusted (1) to give effect to the capital structure above set forth and (2) to write off the claims of Panhandle Eastern against Missouri-Kansas; the resulting net worth applicable to the Common Stock would be divided by $25; and the quotient, to the next lower even number of full shares, would be the number of shares of Common Stock. Applying the foregoing principles to the preliminary figures subject to audit, the number of shares would be 648,652.

In addition to the 4% of tangible property account to be set aside out of earnings as mentioned above, Panhandle Eastern would also set aside out of earnings each year, before payment of dividends on the Common Stock, an amount sufficient to amortize over a ten-year period certain assets of a non-realizable nature now carried on its books at $3,053,391.53 (less reserves heretofore established in respect thereof and amounting, as of December 31, 1935, to $123,105.13).

The Certificate of Incorporation of Panhandle Eastern would be amended so as to provide for cumulative voting for the election of directors. The Board of Directors would be reconstituted so as to consist of 9 members, initially selected by application of the cumulative voting rights in accordance with the new capitalization and its ownership as proposed herein.

The effect of the foregoing would thus be to enable the Missouri-Kansas interests to regain their position as bene-
[fol. 381] ficial owners of one-half of the Common Stock of Panhandle Eastern, with the right of cumulative voting in the election of directors. This Common Stock would be subject only to senior securities representing substantially the additional investment made by the undersigned subsequently to the original Common Stock investment, and would be freed from the burden of the guaranty by Missouri-Kansas (amounting to some $5,500,000) of the principal and interest of the Panhandle Corporation Notes.

The resulting distribution of the securities of Panhandle Eastern would be as follows:

Securities	Owned By— Columbia Oil	Receivers	Others
6% Mortgage Bonds	$14,586,500	—	$3,613,500
Preferred Stock	11,000,000	—	—
Common Stock (approximately)	324,326 sh.	324,326 sh.	

In terms of Panhandle Eastern's book value (using December 31, 1935 consolidated balance sheet figures), the following table shows what the net assets of Panhandle Eastern would be under the proposed plan:

	Under Proposed Plan
Net Assets applicable to all securities	$45,458,943
Less claim against Mo-Kan (which Panhandle Eastern will release)	42,607
	$45,416,336
Less Bonds	18,200,000
Balance after Bonds	$27,216,336
Less Preferred Stock	11,000,000
Balance for Common Stock	$16,216,336
One-half of Common Stock	$ 8,108,168
Claim against Mo-Kan	42,607
Net interest of Receivers	$ 8,150,775

[fol. 382] This table does not purport to reflect the value of the assets as affected by earnings, nor does it reflect the contemplated additions to Panhandle Eastern's property nor the additional Common Stock and Bonds to be issued therefor.

As stated above, it is estimated that, in order to carry out the Detroit Contract, Panhandle Eastern will require about $8,600,000 of additional capital to increase its present capacity to deliver gas at the Illinois-Indiana State line. The plan contemplates the raising of $4,000,000 on April 1, 1936 through the issuance of 160,000 shares of additional Common Stock at $25 per share and the raising of the

remaining amount through the sale of up to $4,600,000 of 6% Bonds, as needed, within three years.

The stock would be offered by Panhandle Eastern for subscription, pro rata to the holders of its Common Stock, subscription rights issued to you as Receivers or to Missouri-Kansas to be distributed pro rata (according to the total number of votes represented by the outstanding stock) to the stockholders of Missouri-Kansas who satisfactorily establish that they are such stockholders, and to be exercisable only by such stockholders or their respective assignees. The time for the exercise of the warrants so distributed would be extended until 90 days after the termination of the receivership, but in no case beyond October 1, 1936. We would subscribe for our own share of such additional stock, we would purchase any shares not subscribed for by your stockholders and, if the time for making subscriptions should be extended, we would temporarily advance the funds to Panhandle Eastern to be repaid with interest at 6% when the subscriptions were made, to assure the availability of the necessary $4,000,000 to Panhandle Eastern on April 1, 1936. The $4,600,000 of additional Bonds as needed would be purchased by Co- [fol. 383] lumbia Gas and Electric Corporation at par. No compensation would be paid to us or to Columbia Gas & Electric Corporation in connection with this financing.

As you know, the existing business of Panhandle Eastern has not been sufficient to yield it an adequate return on its investment. While, of course, we are not in a position to make any representations as to future earnings and do not do so, nevertheless Columbia Gas & Electric Corporation has caused its engineers to make an extensive study of the probable effects of the Detroit Contract on the earnings of Panhandle Eastern and they have estimated that this contract (after giving effect to the proposed gas contracts referred to above) would produce, during the first full year of operation, sufficient net operating revenue, after reasonable charges for depreciation and depletion, to cover all interest charges and dividends on the Preferred Stock contemplated by the plan and thereafter would produce additional net earnings which would be available for the Common Stock on the capitalization contemplated herein. These estimated earnings and the interest of Missouri-Kansas and its stockholders therein under the proposed plan, as compared with their interest in the earnings

for the latest twelve-months' period under the existing financial structure, are more clearly shown by the following table:

	Consolidated Earnings for 12 Months Ended December 31, 1935	Estimated Earnings Under Proposed Capitalization for 5th Year of Operation under Detroit Contract
Total Gross Revenue (inc. Other Income)	$3,614,877	$9,785,000
Operation and Maintenance	$1,064,409	$3,121,000
Provision for Retirements and Depletion	768,197	2,247,000
Taxes (inc. Federal income taxes)	284,598	1,366,000
Total Operating Expenses	$2,117,204	$6,734,000
Gross Corporate Income	$1,497,673	$3,051,000
Interest (other than Note interest) and Amortization of Debt Discount and Expense on First Mortgage Bonds	1,230,267	1,251,000
Balance for Junior Securities	$267,406	$1,800,000
Note Interest	593,460 *	—
Preferred Stock Dividends	—	660,000
Balance for Common Stock	$326,054	$1,140,000

* Note interest for one year; as of December 31, 1935, there was Note interest of $1,383,091.50 in arrears to be made up before any earnings would be available for the Common Stock.

We should be pleased to submit to your examination the data from which the engineers have drawn these estimates, in order that you may make your own decision as to the correctness thereof.

In order to effect a complete settlement of the points of difference among the parties, it is essential that your suit be dismissed and that you and Missouri-Kansas give the defendants in that suit, Panhandle Eastern, their subsidiary companies, and the officers and directors of all said companies, a general release of all your claims. For the same reason the plan also provides for the cancellation [fol. 385] of the obligations of the parties under the contract dated September 17, 1930, under which we made our original investment in the stock of Panhandle Eastern, including the obligations with respect to the purchase of gas from Panhandle Eastern by Missouri-Kansas and Co.

lumbia Gas & Electric Corporation, inasmuch as the obligation of Panhandle Eastern under the Detroit Contract would be as great as it would be justified in assuming under present conditions.

Due to unfor-seen complications, we were unable to present this plan to you as early as we had originally hoped, so that it will be obviously impossible for you to obtain the approval thereof by the Court of Chancery of the State of Delaware in time to enable Panhandle Eastern to notify Detroit City Gas Company by February 1, 1936, as required by Section 7 of Article II of the Detroit Contract, that the financial arrangements contemplated by the plan have been completed. We are accordingly planning to make arrangements to meet this date, which will in no way prejudice your position under the plan and which will preserve for your stockholders the subscription rights which the plan contemplates they are to receive, provided that you accept promptly and secure, on or before March 15, 1936, the approval by the Court of the action necessary to carry it into effect.

The foregoing plan is conditioned upon the following: (1) the execution by you on or before March 15, 1936 of the formal documents necessary to carry out this plan together with the approval thereof by the Court of Chancery of the State of Delaware and the approval of any other Federal or State Courts or public authorities whose approval shall be necessary and from none of which approvals appeal shall lie or the right to such appeal shall be waived by all parties; (2) the appeal of such Federal or [fol. 386] State public authorities as shall be required by law for the consummation of the plan; and (3) that the sellers of 75% of the stock and approximately 97% of the Two-Year 6% Collateral Trust Notes of Panhandle Corporation who have contracted to sell the same to us shall perform their contracts so that we shall be able to acquire all of the debt and 75% of the stock of Panhandle Corporation. If you should accept the foregoing proposal and if thereafter for any reason not involving a breach of the Detroit Contract by Panhandle Eastern, Indiana Gas Transmission Corporation or Michigan Gas Transmission Corporation, the Detroit Contract should fail to be performed, then all of the obligations of the parties then unperformed would be no longer binding.

The action called for by the foregoing proposal would be

taken by the several parties concurrently on or before April 1, 1936, except that the performance of such action as could not in the nature of things be taken concurrently would be taken at the times indicated above.

The advantages of the proposed plan to the stockholders of Missouri-Kansas (assuming the consummation of the Detroit Contract) may be summed up as follows:

1. It would immediately restore to Missouri-Kansas a full one-half direct interest in the Common Stock of Panhandle Eastern, with Preferred Stock substituted for senior obligations which are now in default.

2. Missouri-Kansas would be released from its contingent liability of over $5,500,000 in respect of its guaranty of the Panhandle Corporation Notes.

3. A means would be provided for terminating the receivership of Missouri-Kansas.

[fol. 387] 4. Your stockholders would have a direct opportunity in the further equity financing of Panhandle Eastern and consequently in any increase in its earning power.

5. The direct ownership by you and your stockholders of Common Stock of Panhandle Eastern, coupled with the provisions for cumulative voting would give the Missouri-Kansas interests representatives on the Board of Directors of Panhandle-Eastern, and consequently a direct voice in its management.

Under date of January 29, 1936, a consent decree was entered in the District Court of the United States for the District of Delaware, in the cause entitled United States of America, Petitioner, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, and others, Defendants in equity No. 1099. A copy of said decree is enclosed. The within offer should be read in the light of its provisions.

We suggest that you give this offer your careful consideration and advise us promptly as to your willingness to accept it. In the event of your acceptance, we shall be pleased to prepare and submit the formal contract embodying the above terms, so that proceedings may be instituted promptly for its approval by the Chancery Court of the State of Delaware within the time limit above set forth.

Yours very truly, Columbia Oil & Gasoline Corporation, by Charles A. Munroe, President.

[fol. 388] Messrs. Henry T. Bush and C. Ray Phillips, as Receivers of Missouri-Kansas Pipe Line Company.

DEAR SIRS:

The undersigned Columbia Gas & Electric Corporation concurs in the foregoing letter and, if you accept the plan set forth therein, will agree

(a) To take all of the action on its part set forth therein; and

(b) To enter into an agreement to furnish, to the extent that it may be necessary, the funds required by Columbia Oil & Gasoline Corporation to enable it to carry out its obligations therein set forth.

Yours very truly, Columbia Gas & Electric Corporation, by E. Reynolds, Jr., Vice-President.

The Ambassador, Park Avenue and 51st Street, New York

March 4, 1936.

Columbia Oil & Gasoline Corporation, 61 Broadway, New York, N. Y.

GENTLEMEN:

Under date of January 31, 1936, you submitted to the Receivers of Missouri-Kansas Pipe Line Company a proposal of settlement of the controversies existing between Mis- [fol. 389] souri-Kansas Pipe Line Company and Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation, which proposal had been negotiated by us some time previously.

Two days later the Receivers mailed you a letter purporting to reject this offer for the reason there stated that the proposal did not comply with the stipulation under which the consent decree of January 29th was entered in the District Court of the United States for the District of Delaware in the cause entitled United States of America, petitioner, against Columbia Gas & Electric Corporation, et al., in Equity No. 1099, and the further reason that the proposal was not acceptable to them.

We are advised that this action was taken without notice to creditors and stockholders whose interests would be affected by the acceptance or rejection of this proposal.

Substantial creditors and stockholders of Missouri-Kansas Pipe Line Company, upon learning of this action of the Receivers, have asked us to undertake to have this proposal resubmitted so that it may be presented to the Chancery Court of Delaware for consideration after due notice to stockholders and creditors whose interests are to be affected. These stockholders and creditors believe the proposal should be accepted and desire an opportunity to urge the acceptance of it by the Chancery Court of Delaware.

In the interest of fairness to creditors and stockholders of Missouri-Kansas Pipe Line Company, we ask that this proposal of settlement be resubmitted.

The proposal of January 31, 1936 required acceptance by the Receivers and approval of the Chancery Court of Delaware on or before March 15, 1936. It is manifestly impossible to fairly present this matter to the Court by that date. Accordingly we suggest that the time within which the offer [fol. 390] must be accepted by the Receivers and approved by the Court be extended to May 1, 1936.

If you renew this proposal, may we suggest that your letter of transmittal include a statement of any changes that have taken place in the general situation affecting this proposal since January 31, 1936, and, if you are aware of the basis of the Receivers' contention that this proposal does not comply with the terms of the stipulation, a statement with respect to this matter.

Very truly yours, (Signed) Frank P. Parish, Dupuy G. Warrick.

March 5, 1936.

Messrs. Frank P. Parish and Dupuy G. Warrick, Ambassador Hotel, Park Avenue and 51st Street, New York, N. Y.

DEAR SIRS:

We acknowledge receipt of your letter of the 4th instant and in reply state that you may consider our offer of January 31, 1936, addressed to Messrs. Bush and Phillips, Receivers of Missouri-Kansas Pipe Line Company, as still in force so that it may be submitted to the Chancery Court of Delaware as you propose. We also are willing that the time within which the offer must be accepted by the Receivers and approved by the Chancery Court be extended to May 1, 1936.

[fol. 391] Referring to your request for a statement of important developments affecting this proposal which have taken place since January 31, 1936, we would say as follows:

On January 31, 1936, Panhandle Eastern Pipe Line Company entered into an agreement under which it received from Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation the assurance of sufficient financial assistance to enable it to comply with its Detroit Contract, by providing that they will undertake the construction of the new pipe line to connect with the Detroit market and will provide the funds needed by Panhandle Eastern for the reinforcement of its present pipe line up to the necessary delivery capacity. This agreement was not binding on Panhandle Eastern if, within the twenty days specified in clause (b) of Article V of the stipulation accompanying the Decree of the United States District Court for the District of Delaware entered on January 29, 1936, (copy of which has already been furnished you) it arranged for the necessary financing otherwise than through the assistance of Columbia Oil and Columbia Gas. Panhandle Eastern did not, within such twenty day period, arrange for the necessary financing from any other source and thereupon became bound by the said agreement. Furthermore, on February 28, 1936, Mr. Gano Dunn, the Trustee under the said Decree, approved of this arrangement with the two Columbia companies. A copy of his letter of that date to Panhandle Eastern so expressing his approval, together with a copy of the enclosure mentioned therein, is attached hereto.

Panhandle Eastern Pipe Line Company also on January 31, 1936, notified Detroit City Gas Company that it had arranged for the financing of the construction of the connecting line and of the reinforcement of its present pipe line pursuant to Section 7 of Article II of the contract [fol. 392] dated August 31, 1935, between them, and has received Detroit City Gas Company's acceptance of such notice and of the adequacy of the financial assurance contained therein.

On February 6, 1936, Panhandle Eastern Pipe Line Company retired all of its previously outstanding issue of 6% Promissory Notes, due October 2, 1950, which had been in default as to interest and, by amendment of the Mortgage Trust Indenture securing its Mortgage Bonds it cured its defaults in respect to said Bonds. It accomplished these objectives by a recapitalization as the result of which its

outstanding securities and the ownership thereof are as follows:

Securities of Panhandle Eastern	Owned By		
	Columbia Oil	Panhandle Corp.	Public
Mortgage 6% Bonds*	$14,574,500	$ —	$3,625,500
Notes due September 1, 1937 †	800,000	800,000	—
Preferred Stock (par value)	4,700,000	4,700,000	—
Common Stock	1,149 shs.	1,149 shs.	—

(*) The Trustee under the Mortgage now holds $315,000 cash in the Sinking Fund and is calling for tenders of Bonds to exhaust said funds.

(†) These notes bear no interest until September 1, 1936, and 5% interest for one year thereafter, payable at maturity, and are convertible at the option of the holders, par for par, into Preferred Stock.

The Preferred Stock now outstanding has the voting and conversion rights and other preferences described in our said offer dated January 31, 1936. $1,600,000 (par value) additional thereof has been authorized to be issued on the conversion of the presently outstanding Notes of the same principal amount.

On and after February 6, 1936, the undersigned Columbia Oil & Gasoline Corporation acquired by purchase or made provision for the payment of all of the presently outstanding $4,940,000 principal amount of Two-Year 6% Collateral Trust Notes of Panhandle Corporation, which [fol. 393] are now in default as to principal and interest and which are unconditionally guaranteed as to principal and interest by Missouri-Kansas Pipe Line Company. These Notes are collaterally secured by pledge of the Notes, Preferred Stock and Common Stock of Panhandle Eastern owned by Panhandle Corporation.

On February 6, 1936, the undersigned, Columbia Oil, also purchased 750 shares (75%) of the common stock of Panhandle Corporation and loaned to Panhandle Corporation the sum of $187,876.28 for the discharge of liabilities other than its Two-Year 6% Collateral Trust Notes and its notes evidencing these loans.

Within the period specified in the above mentioned Decree, Columbia Oil has transferred to Mr. Gano Dunn, as Trustee thereunder, the Preferred Stock and Common Stock of Panhandle Eastern owned by it as shown in the above table.

The nine directors of Panhandle Eastern, selected pursuant to paragraph (a) of Section III of the above mentioned Decree are at present Messrs. Gano Dunn, Joseph A.

Bower, James L. Harrop, Dean Mathey, William P. Philips, Henry T. Bush, C. Ray Phillips, Ashton W. Hawkins and F. Cliffe Johnston. The last two named were selected by Mr. Dunn to be independent of either Columbia or Missouri-Kansas interests and Columbia Oil has advised Mr. Dunn that, as to Messrs. Henry T. Bush and C. Ray Phillips and to the two so selected by him, the nomination applies also to the next annual election of directors which will occur on March 9, 1936.

Replying to your request that if we are aware of the basis of the Receivers' contention that our proposal did not comply with the terms of the stipulation, we should enclose a statement with respect to this matter, we beg to say that we have not been advised by the Receivers of the basis for [fol. 394] their contention. With respect to certain provisions of the offer which you and we have heretofore discussed, we can add the following as a clarification of their meaning.

The plan of financing the whole project of supplying the Detroit market with natural gas from Panhandle Eastern Pipe Line Company, as set forth in our said offer of January 31, 1936, embodied the terms on which the undersigned Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation would be willing to assist in this financing. (Their agreement with Panhandle Eastern dated January 31, 1936, described in the second paragraph of this letter, is in conformity therewith.) The provision in said plan that Columbia Gas would construct or acquire the necessary connecting pipe line from Panhandle Eastern's present pipe line to the city gate at Detroit in no way restricted Panhandle Eastern in its freedom to make other arrangements for this financing within the period provided in the above mentioned Decree entered on January 29, 1936. On the contrary, this provision, acceptance of which was optional with Panhandle Eastern, relieves Panhandle Eastern of the burden of raising approximately half of the total new capital funds needed for the whole Detroit project.

Another of the provisions of our said offer dated January 31, 1936, contemplated the cancellation of those provisions of the contract dated September 17, 1930, (between Missouri-Kansas, The National City Company and the undersigned Columbia Oil) which relate to the execution of contracts for the purchase of gas from Panhandle Eastern by

Columbia Gas and Missouri-Kansas. The differences of opinion arising from varied meanings attributed to these provisions constitute a part of the claims asserted by the Receivers of Missouri-Kansas in their suit against us and [fol. 395] others which our said offer dated January 31, 1936, proposed to settle. If any settlement is to be made, manifestly it should be a settlement of all controversies. The requirements of the Detroit Contract so absorb the capacity of Panhandle Eastern's pipe line as then constituted that it can not make additional commitments for substantial quantities of firm gas. Furthermore, should it hereafter become possible to increase the capacity of the line beyond the requirements of the Detroit Contract, this arrangement would not prevent Panhandle Eastern from selling its then available gas to Missouri-Kansas or to any other purchaser on the terms which might then appear most advantageous to it.

If there are any other features of this matter about which you would care to make inquiry, we should be glad to have you take them up with us.

Yours very truly, Columbia Oil & Gasoline Corporation by Charles A. Munroe, President.

The undersigned, Columbia Gas & Electric Corporation, concurs in the foregoing letter.

Columbia Gas & Electric Corporation by E. Reynolds, Jr., Executive Vice-President.

[fol. 396] Gano Dunn, 80 Broad Street, New York

February 28, 1936.

Panhandle Eastern Pipe Line Company, 61 Broadway, New York City.

Dear Sirs:

I hereby notify you that I have approved the financial and contractual arrangement made by you with Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation on January 31, 1936, as indicated in the enclosed letter from me to them dated February 28, 1936.

It is understood that my approval will also be required of the terms and conditions of the contract or contracts to be made by you (as provided in said agreement of January

31, 1936) with Indiana Gas Transmission Corporation and Michigan Gas Transmission Corporation, or either of them.

Yours very truly, Gano Dunn, Trustee under the Decree dated January 29, 1936, in Cause No. 1099 in Equity in the District Court of the United States for the District of Delaware.

Encl.

[fol. 397] Gano Dunn, 80 Broad Street, New York

February 28, 1936.

Columbia Oil and Gasoline Corporation, Columbia Gas and Electric Corporation:

GENTLEMEN:

I am hereby indicating my approval of your contract of January 31, 1936, with Panhandle Eastern Pipe Line Company, provided you agree that in connection with paragraph 1 (d) and 3 (a) of said contract, I, as Trustee, may cause the board of Panhandle Eastern to extend the time for exercising subscription rights to the half of the proposed issue of common stock not offered to Columbia Oil until the private claims of Missouri-Kansas against the Columbia companies have been settled (either by litigation or compromise) or until such other time and under such conditions as I may determine to be proper in the interests of Panhandle Eastern and its shareholders, but in no event later than January 1st, 1937, and that such extension of the time for exercising subscription rights shall have the same effect as the extension in the time of payment provided for by paragraph 3 (a) of said contract: and provided also that during the same period I may cause said Board to offer the subscription rights to the half of such stock not offered to Columbia Oil to such other person or persons who as a result of such settlement, or non-settlement, shall then be entitled thereto. This would mean that Columbia Oil, immediately upon the offer of the stock, would [fol. 398] subscribe to one half of the issue of common stock and would under paragraph 3 (a), as hereby modified, advance the amount represented by the remainder of the stock-issue.

Yours very truly, Gano Dunn, Trustee.

The above is hereby accepted: Columbia Gas & Electric Corporation, by E. Reynolds, Jr., Exec. Vice President; Columbia Oil & Gasoline Corporation, by Charles A. Munroe, President.

Columbia Gas & Electric Corporation, 61 Broadway, New York, N. Y.

April 22, 1936.

Columbia Oil & Gasoline Corporation, 61 Broadway, New York, N. Y.

DEAR SIRS:

Under date of January 31, 1936, we entered into an agreement with you whereby we agreed to advance to you such sums of money as you would require to carry into effect [fol. 399] your obligations under your offer to the Receivers of Missouri-Kansas Pipe Line Company dated January 31, 1936.

We understand that you intend to modify your aforesaid offer in accordance with the agreement attached hereto. This is to inform you that our obligations will include an obligation to advance to you such sums as may be necessary to carry out your offer to the Receivers as modified in accordance with the agreement attached herewith.

Very truly yours, Columbia Gas & Electric Corporation, by E. Reynolds, Jr., President.

April 22, 1936.

Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation, 61 Broadway, New York, N. Y.
In re: Missouri-Kansas Pipe Line Company Receivership

DEAR SIRS:

We, the undersigned, Receivers of Missouri-Kansas Pipe Line Company, suggest that your offer to us dated January 31, 1936, as supplemented by your letter of March 5, 1936, filed in the Missouri-Kansas Pipe Line Company receiver-[fol. 400] ship proceedings, be modified in the following particulars and we hereby offer, in the event you agree to the following modifications, that we will present the offer as so modified to the Chancellor of the State of Delaware at the adjourned hearing now set for Thursday, April 23, 1936, and will recommend that he enter an order directing us to accept the offer as so modified. Subject to your acceptance and such approval by the Chancellor, we agree to carry into effect with you the offer as so modified:

The modifications are as follows:

1. That the Preferred Stock of Panhandle Eastern Pipe Line Company, as described in your letter of January 31, 1936, be changed in the following respects:

(a) The provision for the convertibility of each share of Preferred Stock into 4 shares of Common Stock at any time up to the date of redemption be eliminated;

(b) The provision giving the Preferred Stock voting rights for the election of directors be eliminated and there be substituted in lieu thereof the following arrangement:

Of the 110,000 shares of Preferred Stock mentioned in your letter of January 31, 1936, 10,000 shares be set apart and designated as Class B. Preferred Stock and the same be non-redeemable, non-convertible and non-participating in earnings except that such 10,000 shares shall bear a dividend provision identical with the dividend provisions provided for in your letter of January 31, 1936, and that said 10,000 shares of Class B Preferred Stock be entitled to elect as a class two of the nine directors to the Board of Pan- [fol. 401] handle Eastern Pipe Line Company. The balance of the directors, seven in number, shall be elected by the common stock and said stock shall have cumulative voting rights;

(c) The balance of the 110,000 shares of Preferred Stock mentioned in your letter of January 31, 1936, other than the shares to be set apart as a Class B. Preferred Stock, as mentioned in subparagraph (b) above, consisting of 100,000 shares of Preferred Stock, be designated Class A Preferred Stock and until redeemed shall be entitled to participate in earnings of Panhandle Eastern Pipe Line Company upon the following basis:

When in any year the preferred dividends plus any and all accumulations on both the Class A and the Class B Preferred Stock outstanding have been declared and paid and a dividend has been declared and paid upon the Common Stock at the rate of $1.50 per share, any further dividends declared and paid in any such year shall be shared by the Class A Preferred Stock and the Common Stock by classes in the ratio of 25% thereof to the Class A Preferred Stock and 75% thereof to the Common Stock so long as the 100,000 shares of Class A Preferred Stock are outstanding. In the

event that the Class A Preferred Stock is redeemed in part the percentage of participation of the remaining Class A Preferred Stock outstanding shall be in such proportion of 25% as such number of shares outstanding bears to 100,000 and upon said percentage (25%) being reduced through part of the Class A Preferred Stock being redeemed, the percentage otherwise payable to the Common Stock (75%) would be accordingly increased;

[fol. 402] (d) Said Class A Preferred Stock shall be redeemable at any time in whole or in part at par plus accrued dividends on or before July 1, 1941; after July 1, 1941, said Class A Preferred Stock shall be redeemable at any time in whole or in part at 110% plus accrued dividends. However, at any and all times the premium of 10% on such stock shall be waived upon any redemption from time to time out of earnings of the Corporation of any part of said Class A Preferred Stock then owned, held or controlled by Columbia Oil & Gasoline Corporation or Columbia Gas & Electric Corporation.

(e) Except as above stated, the Class A and Class B Preferred Stock shall contain identical provisions which shall be substantially those now stated in the Certificate of Incorporation.

2. The 80,000 shares of Common Stock which the offer of January 31, 1936 contemplates shall first be tendered to stockholders of Missouri-Kansas Pipe Line Company and thereafter taken up by Columbia Oil & Gasoline Corporation to the extent not purchased by said stockholders shall be tendered to said stockholders as provided in the offer of January 31, 1936, as modified by the letter of Gano Dunn, Trustee, dated February 28, 1936, attached to your letter of March 5, 1936, and to the extent Missouri-Kansas Pipe Line Company stockholders do not exercise their rights to subscribe the same shall be subscribed by Columbia Oil & Gasoline Corporation, and to the extent Columbia Oil & Gasoline Corporation subscribes for said shares and purchases the same Missouri-Kansas Pipe Line Company or any new corporation taking over its assets under any plan of reorganization or readjustment or reclassification of its [fol. 403] stock shall have the right to purchase said shares at $25 per share plus interest at the rate of 6% per annum from the date of purchase by Columbia Oil & Gasoline Cor-

poration to the date of such purchase from Columbia Oil & Gasoline Corporation during a period of six months after the discharge of the undersigned as Receivers of Missouri-Kansas Pipe Line Company and the termination of the receivership estate, except that in no event shall such right continue after the 31st day of December, 1937. In your offer of January 31, 1936 you have the following statement:

"The stock would be offered by Panhandle Eastern for subscription, pro rata to the holders of its Common Stock, subscription rights issued to you as Receivers or to Missouri-Kansas to be distributed pro rata (according to the total number of votes represented by the outstanding stock) to the stockholders of Missouri-Kansas who satisfactorily establish that they are such stockholders, and to be exercisable only by such stockholders or their respective assignees."

This should be changed to read as follows:

The stock would be offered by Panhandle Eastern for subscription, pro rata to the holders of its Common Stock, subscription rights issued to you as Receivers or to Missouri-Kansas to be distributed pro rata among the holders of your Common Stock and Class B Stock in proportion to the relative dividend and liquidation provisions of said classes of stock, namely, each Class B share would be entitled to one-twentieth of the right which would be accorded each share of the Common Stock. Such distribution to be made to the stockholders of Missouri-Kansas who satisfactorily establish that they are such stockholders and said [fol. 404] rights to be exercisable only by such stockholders or their respective assignees.

3. The September 17, 1930 contract shall be canceled as provided in your offer of January 31, 1936 without prejudice, however, to Missouri-Kansas Pipe Line Company or its Receivers to enter into any contract or contracts with Panhandle Eastern Pipe Line Company for the purchase of gas which the Board of Directors of Panhandle Eastern Pipe Line Company agree upon and the releases to be given to you pursuant to your offer shall include all rights of Panhandle Eastern Pipe Line Company and its stockholders, you and we cooperating as the owners of its entire stock to authorize the same.

4. The provisions in the offer of January 31, 1936, with respect to the amount of cash which the undersigned shall receive, be changed as follows:

(a) The payment of $300,000 presently provided for, remains;

(b) Columbia Oil & Gasoline Corporation shall purchase from the Receivers at $25 per share up to 40,000 shares of Panhandle Eastern Pipe Line Company Common Stock which the Receivers will obtain under the offer, provided, however, that at least such number of shares be first offered to the present stockholders of Missouri-Kansas Pipe Line Company for purchase by them at $25 per share, in addition to, at the same time and in the same manner, as the 80,000 shares referred to in Paragraph 2 above. The obligation of Columbia Oil & Gasoline Corporation shall be to purchase only such portion as shall not be taken by the stockholders after such offering, but the money provided by Columbia Oil & Gasoline Corporation shall be used only [fol. 405] for the purpose of paying claims adjudicated in the receivership proceedings and administration fees and expenses allowed by the Chancellor. Money raised from other sources or from stockholders may be used for other purposes. To the extent there would not be needed for said purposes the full $1,000,000 which would be so provided by Columbia Oil & Gasoline Corporation if it purchased 40,000 shares of the Panhandle Eastern stock at $25 per share, Columbia Oil & Gasoline Corporation shall not be called upon to make such purchase. In the event Columbia Oil & Gasoline Corporation is called upon to purchase any part or all of the 40,000 shares, Missouri-Kansas Pipe Line Company or any new company taking over its assets under a plan of reorganization, readjustment or reclassification, shall be given a right within a period of six months after the discharge of the undersigned as Receivers of Missouri-Kansas Pipe Line Company and the termination of the receivership estate to repurchase said shares at $25 per share plus interest at the rate of 6% per annum from the date of purchase by Columbia Oil & Gasoline Corporation to the date of such purchase from Columbia Oil & Gasoline Corporation, which right shall in no event extend beyond the 31st day of December, 1937.

(c) In the event the Chancellor of the State of Delaware shall request an extension of the offer beyond May 1, 1936,

you will be willing to extend it for his convenience until the 10th day of May, 1936.

[fol. 406] 5. Except as the modifications suggested in this letter make changes in the offer of January 31, 1936, all of its terms and provisions shall remain unaltered.

C. Ray Phillips, Henry T. Bush, as Receivers of Missouri-Kansas Pipe Line Company.

We hereby agree to the modification set forth above.

Columbia Oil & Gasoline Corporation, by Charles A. Munroe, President. Columbia Gas & Electric Corporation, by E. Reynolds, Jr., President.

* * * * * * *

[fol. 407] IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL COMPLAINT—Filed January 12, 1939

The United States of America, plaintiff in the above-entitled action, by John J. Morris, Jr., United States Attorney for the District of Delaware, acting under the direction of the Attorney General, files this supplemental complaint, to obtain such further relief in this action, in accordance with Section V of the decree entered herein January 29, 1936, as is necessary for the purpose of giving full effect to said decree and for the carrying out thereof.

I

Summary of Relevant Provisions of the Decree of January 29, 1936

1. Description of the corporate defendants and Panhandle Eastern Pipe Line Company. In section I of the decree of January 29, 1936, the defendant Columbia Gas and Electric Corporation, hereinafter referred to as "Columbia Gas", the defendant Columbia Oil and Gasoline Corporation, hereinafter referred to as "Columbia Oil", and Panhandle Eastern Pipe Line Company, hereinafter referred to as "Panhandle Eastern", are described as follows:

Columbia Gas, a Delaware corporation, is a holding company owning more than fifty subsidiary companies. A substantial part of the business of said enterprise is the pro-

duction, transmission, distribution and sale of natural and artificial gas.

Columbia Oil, a Delaware corporation, was organized to hold and operate oil and gasoline properties formerly owned by Columbia Gas. Columbia Oil has not been and is not now engaged in the business of producing, transmitting, [fol. 408] distributing and selling natural gas except that it owns certain securities of Panhandle Eastern, and all the outstanding capital stock and certain indebtedness of Indiana Gas Transmission Corporation.

Panhandle Eastern, a Delaware corporation, owns and controls large gas-producing areas in the Texas Panhandle and in Kansas, and has constructed a natural gas pipe line which extends from these producing areas through the states of Oklahoma, Kansas, Missouri and Illinois, and touches upon Indiana, for the purpose of transmitting, distributing and selling such natural gas.

2. Restrictions upon Columbia Gas and Columbia Oil. By section II of said decree, Columbia Gas and Columbia Oil were perpetually enjoined from exercising, or attempting, individually or collectively, directly or indirectly, to exercise, any dominion or control over Panhandle Eastern, and from restraining, or interfering in any manner with, the free and independent action of Panhandle Eastern in the production, transportation, sale or delivery of natural gas to any person, corporation, community or section of the United States. They were likewise enjoined from holding, acquiring, voting or in any manner acting as the owners, directly or indirectly, of the whole or any part of the stock, or other share capital, or bonds, property or assets, of Panhandle Eastern or any other company, corporation, association or organization owning any substantial amount of the securities of Panhandle Eastern. They were likewise enjoined from participating in any way, directly or indirectly, and from exercising any control, direction, supervision, or influence, in the management or control of Panhandle Eastern. To these prohibitions, the following exceptions were made:

(a) Columbia Oil was permitted to own or acquire stock in or obligations of Panhandle Eastern, and to exercise vot- [fol. 409] ing rights appurtenant thereto; but Columbia Gas was enjoined from acquiring any interest in any such stock owned or acquired by Columbia Oil, whether by operation

of law, or through the enforcement of any lien arising from any indebtedness whatsoever of Columbia Oil to Columbia Gas, or otherwise.

(b) Columbia Gas was permitted to own stock in and obligations of Columbia Oil.

(c) Columbia Gas was permitted to own or acquire obligations, without any existing or potential voting rights, of Panhandle Eastern; but Columbia Gas was enjoined from acquiring any of the pipe line or other physical assets of Panhandle Eastern in connection with the enforcement of any rights under obligations of Panhandle Eastern owned or acquired by it.

(d) It was provided that when Columbia Gas shall have effectively divested itself of all control, direct or indirect, legal or practical, of Panhandle Eastern by no longer owning stock of any class having present or potential voting rights in Columbia Oil, Columbia Oil, upon the approval of this Court, shall no longer be subject to the restrictions set forth in section II of said decree.

The foregoing restrictions upon Columbia Gas and Columbia Oil were, by section I of said decree, likewise made applicable to all persons claiming or assuming to act or on behalf of either of said corporations; to any successors or assigns of either of said corporations; to any persons who might, directly or indirectly, acquire ownership or control of the property, business or assets of either of said corporations; and to the taking of any prohibited action by indirection or by or through any subsidiaries, affiliates, officers, [fol. 410] directors, shareholders, agents, receivers, trustees, attorneys, employees, or otherwise.

3. The Voting Trust. By section III of said decree, Gano Dunn was constituted trustee for the purposes and with the powers and duties hereinafter summarized. It was provided that within ten days following the entry of said decree, Columbia Oil should transfer to said trustee all stock carrying present or potential voting rights then owned by it in Panhandle Eastern, and that any stock which might thereafter be acquired by Columbia Oil should likewise be promptly transferred to said trustee.

Under section III of said decree, the trustee holds legal title to such stock and exercises all rights and privileges incident thereto, upon the following terms and conditions:

(a) It was made his duty to vote such stock for the election of as many directors of Panhandle Eastern as such stock might be entitled to elect. One of the directors thus elected must be the trustee himself. The remainder must be selected from among persons recommended by Columbia Oil.

(b) It was made his duty to vote such stock upon all other questions and matters in respect of which such stock was entitled to vote, as directed by Columbia Oil, except insofar as such directions might be inconsistent with the purposes of said decree.

(c) It was provided that he would receive reasonable compensation, in an amount, not less than $15,000 per annum, to be approved by this Court, and that he would be reimbursed for any expenses incurred by him in the performance of his duties as such trustee. Such compensation was made payable in equal shares by Columbia Oil and Columbia Gas.

[fol. 411] (d) He was likewise made subject to certain other duties supplementary to those described in paragraphs (a), (b) and (c), above.

4. The declared purposes of the decree.

(a) Principal purpose. In the fourth paragraph of the preamble to said decree, it was explicitly set forth that "provision against domination or control, direct or indirect, in the affairs of Panhandle Eastern Pipe Line Company by the defendant Columbia Gas and Electric Corporation and the Maintenance of said Panhandle Eastern Pipe Line Company in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others," constituted the proper basis for the entry of the decree.

(b) Subsidiary purposes. To effectuate this principal purpose of securing a position of free and independent action for Panhandle Eastern, the voting trust described hereinabove was set up as an interim device, and it was provided, in the last paragraph of section III of said decree, that the voting trust would be terminated with the approval of this Court "when (1) Columbia Gas has effectively divested itself of all control, direct or indirect, legal

or practical, of Panhandle Eastern by (a) no longer owning stock of any class having present or potential voting rights in Columbia Oil or (b) by Columbia Oil divesting itself of ownership of all stock of Panhandle Eastern; or when (2) under the circumstances then existing, the continuation of said trust is no longer essential or necessary in carrying out the purposes of this decree;".

II

Developments Since Entry of the Decree of January 29, 1936

1. Security holdings of Columbia Oil in Panhandle East- [fol. 412] ern, and of Columbia Gas in Columbia Oil. The allegations which follow in this subsection 1 are made upon information and belief.

(a) Columbia Oil now is the beneficial owner of 404,326 shares of common stock in Panhandle Eastern, representing a majority of the 728,652 shares issued and outstanding; $10,000,000 par value of Class A preferred stock of Panhandle Eastern; and $1,000,000 par value, being the entire issue, of Class B preferred stock of Panhandle Eastern. The Class B preferred is non-callable, and entitles the holders thereof (as a class) to elect two directors to the board of directors of Panhandle Eastern. Thus, the common stock and the Class B preferred stock beneficially owned by Columbia Oil elect six of the nine directors of Panhandle Eastern. Out of these six directors, however, one must be the voting trustee.

The remaining 324,326 shares of the outstanding common stock of Panhandle Eastern are held by Missouri-Kansas Pipe Line Company, hereinafter referred to as "Mokan", a Delaware corporation. These 324,326 shares were acquired by Mokan under the terms of a settlement agreement provided for in section V of the stipulation filed in connection with said decree of January 29, 1936, made and entered into by and between Columbia Gas and Columbia Oil on the one hand and the receivers of Mokan appointed by the Chancery Court of the State of Delaware on the other, and approved by said Court on the 29th day of April, 1936. Mokan also owns a warrant entitling it to purchase an additional 80,000 shares of the common stock of Panhandle Eastern at $25.00 per share. In the said settlement agreement between Columbia Gas and Columbia

Oil and the receivers of Mokan, Columbia Gas and Columbia Oil required said receivers to agree to distribute said warrant (or the stock represented thereby) pro rata among [fol. 413] the stockholders of Mokan, and Columbia Oil agreed to purchase from Panhandle Eastern any part of said warrant (or the shares represented thereby) not subscribed for by the stockholders of Mokan, thereby increasing the proportionate holdings of Columbia Oil in the common stock of Panhandle Eastern.

(b.) Columbia Gas owns 400,000 shares, being the entire amount issued and outstanding, of preferred stock of Columbia Oil. Such stock, as long as owned by Columbia Gas, carries with it the right to elect the largest number of directors constituting a minority of the board of directors of Columbia Oil. In addition, Columbia Gas owns the entire funded debt of Columbia Oil, in a total face amount of approximately $23,000,000.

Prior to the entry of the decree of January 29, 1936, all of the common stock of Columbia Oil was deposited in a voting trust, against which voting trust certificates had been issued and were held by the holders of the common stock of Columbia Gas. Following the entry of said decree, this voting trust was dissolved, and the common stock of Columbia Oil was distributed, on a pro rata basis, to the common stockholders of Columbia Gas. Although the common stock of Columbia Oil is now listed, and from time to time traded in, upon the New York Curb Exchange, the common stockholders of Columbia Gas and the common stockholders of Columbia Oil have remained and now are substantially identical. In the election of directors of Columbia Oil, the common stockholders of Columbia Oil enjoy the right of cumulative voting.

The largest single common stockholder of Columbia Gas is New York United Corporation, a New York corporation, which is a wholly owned subsidiary of United Corporation, [fol. 414] a Delaware corporation. New York United Corporation owns approximately 20% of the outstanding voting securities of Columbia Gas.

2. The voting trust. Early in February 1936, shortly after the entry of the decree of January 29, 1936, Columbia Oil, in accordance with the terms of the decree, transferred all of the stock of Panhandle Eastern owned by it to Gano Dunn, as trustee. Gano Dunn, as trustee, has held all

stock of Panhandle Eastern beneficially owned by Columbia Oil continuously since that date and now holds such stock. Soon after the creation of the voting trust, Gano Dunn was elected a director of Panhandle Eastern, in accordance with the decree of January 29, 1936, and he has served as such director continuously since that time. He has participated actively in the management of Panhandle Eastern. He receives compensation in the amount of $22,500 per annum, paid in equal parts by Columbia Gas and Columbia Oil.

3. Necessity for further action by this Court to achieve the purposes of the decree.

(a) In the period of almost three years which has elapsed since the entry of the decree of January 29, 1936, no steps of any kind have been taken toward the effective termination of all control by Columbia Gas of Panhandle Eastern, whether by Columbia Gas' disposing of all stock of any class having present or potential voting rights in Columbia Oil, or by Columbia Oil's divesting itself of ownership of all stock of Panhandle Eastern, as contemplated by the last paragraph of section III of such decree.

(b) Although it is the expressly declared purpose of said decree to restore Panhandle Eastern to, and to maintain Panhandle Eastern in, a position of free and inde- [fol. 415] pendent action in the production, transmission, sale and distribution of natural gas in competition with others, and although the last paragraph of section III of such decree contemplates that this purpose shall be achieved through Columbia Gas' disposing of all stock of any class having present or potential voting rights in Columbia Oil, or by Columbia Oil's divesting itself of ownership of all stock of Panhandle Eastern, the decree, in its present form, does not provide for any particular method or procedure for such divestiture. The course of events since the entry of said decree on January 29, 1936, has made it increasingly clear (1) that the only effective way to restore and maintain a position of free and independent action for Panhandle Eastern is to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle

Eastern, as contemplated by the last paragraph of section III of said decree, and (2) that to accomplish the purpose of said decree, it is necessary to supplement said decree by a further order requiring the formulation and submission to this Court for approval of a suitable plan or plans to accomplish such divestiture.

III

Wherefore, plaintiff prays:

A. That this honorable Court exercise the jurisdiction retained by it in section V of said decree of January 29, 1936 for the purposes therein stated, to wit, to give full effect to said decree and to make such other and further orders and decrees and to take such action as may be necessary to the carrying out thereof, and enter a judgment herein to the following effect:

[fol. 416] 1. Adjudging that, in order to achieve the declared primary purpose of said decree of January 29, 1936, namely, to restore Panhandle Eastern to, and maintain Panhandle Eastern in, a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others, it is necessary to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern.

2. Adjudging that plaintiff has the right to such further relief in this action as may be necessary to give full effect to said decree of January 29, 1936, and to carry out the purposes thereof.

3. Directing Columbia Gas to divest itself of all control, direct or indirect, legal or practical, of Panhandle Eastern, either by disposing of all interest which it may have in any stock of any class having present or potential voting rights in Columbia Oil, or by causing Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern; and, to that end:

(a) Directing Columbia Oil to proceed straightway to formulate and submit to this Court for approval, through

the trustee for sale constituted in accordance with subsection 5 of this section III, a plan for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern;

(b) Directing Columbia Gas to proceed straightway to formulate and submit to this Court for approval, as an alternative to any plan submitted by Columbia Oil pursuant to paragraph (a) of this subsection 4, a plan for the sale [fol. 417] or other disposition by it of all interest which it may have in any securities having present or potential voting rights in Columbia Oil.

4. Re-constituting the voting trust established pursuant to said decree of January 29, 1936, so as:

(a) To make the voting trustee a trustee for sale, with the powers and duties, and subject to the conditions, set forth in said decree of January 29, 1936, and with the further duties of (1) formulating and submitting to this Court for approval a plan for the sale or other disposition by Columbia Oil of all interest which it may have in any stock of Panhandle Eastern, (2) receiving, examining and transmitting to this Court with a recommendation for approval or disapproval, any offer which may be submitted by any person for the purchase of any securities in which Columbia Oil may have an interest or of which Columbia Oil may be the issuer, and any plan submitted by Columbia Oil for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern, pursuant to paragraph (a) of subsection 4 of this section III, and (3) selling or otherwise disposing of such stock in accordance with such a plan or offer approved by this Court and in accordance with any further order of this Court relating thereto;

(b) To provide that the term of appointment of the person designated as said trustee for sale shall expire not later than two years from the date of entry of judgment herein, and that such person shall not be subject to reappointment as such trustee; and

(c) To empower said trustee to employ such accountants, engineers, appraisers or other technicians and experts as may be necessary to assist him in discharging his duties.

[fol. 418] B. That plaintiff have such other and further relief as to this Court may seem proper.

(Sgd.) Homer S. Cummings, Attorney General. (Sgd.) Thurman Arnold, Assistant Attorney General. (Sgd.) Wendell Berge, Special Assistant to the Attorney General. (Sgd.) Hugh B. Cox, Special Assistant to the Attorney General. (Sgd.) Milton Katz, Special Assistant to the Attorney General. (Sgd.) John J. Morris, Jr., United States Attorney for the District of Delaware. (Sgd.) John S. L. Yost, Special Assistant to the Attorney General. (Sgd.) Morris R. Clark, Special Assistant to the Attorney General.

[fols. 419-420] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Titles omitted]

Motion of Missouri-Kansas Pipe Line Company for Leave to Intervene, Notice of Motion and Petition

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[fols. 421-422] NOTICE OF MOTION FOR LEAVE TO INTERVENE

To the United States of America, Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, George H. Howard, Phillip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay, and John H. Hillman, Jr.:

Please take notice, that by an order of this Court dated this day, the within motion of Missouri-Kansas Pipe Line Company for leave to intervene in this action and for other relief will be brought on for hearing on the 10th day of February, 1939, at 2 P. M., in the courtroom of this Court in the Post Office Building in the City of Wilmington, Delaware.

Dated, February 6th, 1939.

Biggs & Lynch, by Stewart Lynch, Solicitors for Petitioner.

[fol. 423] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR LEAVE TO INTERVENE—Filed February 6, 1939

Missouri-Kansas Pipe Line Company, a corporation of the State of Delaware, by Biggs & Lynch, its attorneys, moves this Honorable Court for an order granting it leave to intervene in the above-entitled action and to file the annexed petition.

This motion is made upon all the pleadings and proceedings heretofore had herein, and upon the grounds more particularly set forth in the petition hereto annexed.

Wherefore, petitioner moves this Court for an order granting it leave to intervene in this proceeding and to file the annexed petition, and requiring the parties defendant respectively to answer or otherwise plead thereto, within twenty (20) days from the date of service, and for such other and further relief as may be just and proper.

Dated, February 6, 1939.

Biggs & Lynch, by Stewart Lynch, Solicitors for Petitioner.

[fol. 424] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENOR'S PETITION

To the Honorable Judge of the District Court of the United States for the District of Delaware:

The Petition of Missouri-Kansas Pipe Line Company, the above named Intervenor, respectfully shows to this Court and alleges:

I. Intervenor, Missouri-Kansas Pipe Line Company (hereinafter referred to as "Mokan"), is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

II. On March 6th, 1935, the above named Petitioner, United States of America (hereinafter referred to as "United States"), commenced this suit in equity against the above named defendants by the filing of a Petition

herein, alleging generally that the said defendants had entered into a conspiracy to violate and had violated the Anti-Trust Laws of the United States.

[fol. 425] III. Thereafter and on October 30th, 1935, United States filed an Amended and Supplemental Petition (hereinafter referred to as the "Amended Petition"). Reference is made to said Amended Petition and to the Exhibits annexed thereto as if herein fully and at length set forth.

IV. Said Amended Petition alleged among other things the following:

a. That all of the above named defendants had been and were "engaged in a combination and conspiracy to restrain trade and commerce in natural gas among the States of Kansas, Missouri, Illinois, Indiana, Michigan, and Ohio, and to monopolize and attempt to monopolize such trade and commerce in said natural gas in the States of Indiana, Michigan, and Ohio * * *". (Par. 17.)

b. That the defendant, Columbia Gas & Electric Corporation (hereinafter referred to as "Columbia Gas") was a holding company owning, controlling and dominating more than seventy subsidiaries (Par. 13); that Columbia Oil & Gasoline Corporation (hereinafter referred to as "Columbia Oil") was organized by Columbia Gas to hold the oil, gasoline and gas-producing properties of the Columbia System, that all of the first preferred and second preferred stock of Columbia Oil was owned by Columbia Gas, and that all of the common stock of Columbia Oil had been deposited under a Voting Trust Agreement (Par. 14), which was controlled by Columbia Gas (Par. 21). (Columbia Gas and Columbia Oil collectively will sometimes be referred to herein as "Columbia Companies").

c. That the field of operations of the Columbia Companies so far as the production, transmission and distribution of natural gas was concerned, extended throughout various States of the United States; that in a large portion of the State of Ohio, it had for many years past enjoyed a virtual monopoly in the sale and distribution of natural gas (Par. 15).

d. That Mokan had undertaken the construction of a large pipe line to transport natural gas from the Texas

Panhandle and Kansas into the States of Indiana, Michigan, Ohio and elsewhere, where Mokan planned to sell its natural gas; that for such purpose, Mokan caused the organ- [fol. 426] ization of Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle Eastern") and became the owner of the entire capital stock of that corporation (Par. 16); that the above named defendants then entered into a combination and conspiracy to monopolize trade and commerce in natural gas in the States of Indiana, Michigan and Ohio (Par. 17), and to prevent Mokan from constructing the said pipe line and, failing that, to obtain control of the management and operation of Panhandle Eastern.

e. That the specific purposes and objects of the said combination and conspiracy were as follows (Par. 17):

"To prevent, if possible, the construction of the natural-gas pipe line described in Article 16 hereof, and, failing that, to obtain control of the management and operation of said Panhandle Eastern Pipe Line Company and its subsidiaries, and, having obtained such control, so to conduct its activities and affairs as to (a) prevent said Missouri-Kansas Pipe Line Company from obtaining its requirements of natural gas from said Panhandle Eastern Pipe Line Company; (b) prevent said Panhandle Eastern Pipe Line Company from making available, either directly or indirectly, its large supplies of natural gas in such manner as to compete with the Columbia System or endanger its actual or contemplated monopoly in the distribution and sale of natural gas in said States of Indiana, Michigan, and Ohio; and finally (c) bring said Panhandle Eastern Pipe Line Company to such a financial condition that the corporate defendants herein might be enabled to acquire the complete domination and ownership of its physical assets and properties, either by foreclosure of the mortgage securing its bonded indebtedness or otherwise, as hereinafter more particularly described."

f. That the Columbia Companies, having failed in their attempts to prevent the construction of the Panhandle Eastern pipe line, thereupon by means of a contract dated September 17th, 1930, supplemented by a memorandum dated September 30th, 1930, providing for the purchase by Columbia Oil of a one-half interest in Panhandle Eastern, ob-

tained control of the management and operation of Panhandle Eastern (Pars. 20-23); that said contracts further provided that the Board of Directors of Panhandle Eastern was to consist of nine members, four of whom were to be nominated by the Columbia Companies, four by Mokan and the remaining or ninth director to be the defendant, George [fol. 427] H. Howard, whom Mokan was induced to accept as such ninth director because of representations by the defendants that said Howard would act impartially and in the best interests of Panhandle Eastern (Par. 21).

g. That the appointment of said George H. Howard as such ninth director was in reality brought about by the Columbia Companies in furtherance of said combination and conspiracy; that at the time of such selection said Howard was President of the United Corporation, which corporation was the largest stockholder of the defendant, Columbia Gas; and that the said Howard as such Director acted solely in the interest of the Columbia Companies for the purpose of effecting the objects of said combination and conspiracy (Par. 21).

h. That the Board of Directors of Panhandle Eastern, thus dominated by the Columbia Companies, including the said Howard, prevented Mokan from obtaining natural gas from Panhandle Eastern, despite the fact that the Columbia Companies and Panhandle Eastern had agreed by contract to sell natural gas to Mokan; that the Columbia Companies failed to purchase any gas from Panhandle Eastern, despite the fact that they had contracted to do so; and further failed and neglected opportunities to sell Panhandle Eastern gas to others, including the Cities of Indianapolis, Ind., Kansas City, Mo., St. Louis, Mo., Detroit, Mich., as a result of all of which Mokan was forced into Receivership (Pars. 27, 31).

i. That after Mokan had been forced into receivership by the illegal acts of the defendants, the defendants took such steps and proceedings as were intended to assure the acquisition by them of the fifty (50%) per cent of the common capital stock of Panhandle Eastern then held by the Receivers of Mokan; that such conduct of the defendants was in furtherance of the combination and conspiracy and was intended to cause Panhandle Eastern Pipe Line Company to be wholly absorbed by the Columbia Companies, thus

assuring to such Companies a monopoly in natural gas in the potential markets of Indiana and Michigan (Pars. 27-32).

V. The Amended Petition prayed for a Decree adjudging (1) that the acquisition by the Columbia Companies of fifty (50%) per cent of the capital stock of Panhandle Eastern [fol. 428] was in violation of the Anti-Trust Laws; (2) that the proposed acquisition by the defendants of the remaining fifty (50%) per cent of the outstanding capital stock of Panhandle Eastern be restrained as a further violation of the Anti-Trust Laws; (3) that the defendants be enjoined from further engaging in said combination and conspiracy, from employing any of the means described in said Amended Petition for effectuating the said conspiracy, from exercising any dominion or control over Panhandle Eastern, and from restraining or interfering with the free and independent action of Panhandle Eastern in any section or community in the United States; (4) that Columbia Oil be required to divest itself of all securities of Panhandle Eastern then owned or thereafter to be acquired by it; (5) that the defendants be enjoined from acquiring, receiving, holding, voting or in any manner acting as the owners of the whole or any part of the stock or other securities or assets of Panhandle Eastern.

VI. Thereafter and on the 29th day of January, 1936, a stipulation was duly entered into between the Petitioner and all of the defendants, consenting to the entry of a Decree against said defendants.

VII. On the said 29th day of January, 1936, a Decree, to which was attached as a part thereof the aforesaid stipulation, was duly made and entered in this Court against all of the defendants.

VIII. Said Decree contained, among others, the following recitals:

"And it appearing that the Petitioner (United States of America) alleges that the defendant Columbia Gas & Electric Corporation, through ownership by its affiliate Columbia Oil & Gasoline Corporation of various securities of Panhandle Eastern Pipe Line Company and otherwise, has interfered with, dominated and controlled the management and operation of said Panhandle Eastern Pipe Line Com-

pany with the purpose and effect of preventing competition, actual and potential, between said Panhandle Eastern Pipe Line Company and said Columbia Gas & Electric Corporation, and of monopolizing and attempting to monopolize interstate trade and commerce in natural gas in certain sections of the United States.

"And it further appearing from said stipulation that the Petitioner (United States of America) and the defendants have agreed that provision against domination or control, [fol. 429] direct or indirect, in the affairs of Panhandle Eastern Pipe Line Company by the defendant Columbia Gas & Electric Corporation and the maintenance of said Panhandle Eastern Pipe Line Company in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others constitutes the proper basis for the entry of this decree;"

and decreed, among other things, as follows:

"That the defendants be and they are hereby perpetually enjoined from exercising, or attempting, individually or collectively, directly or indirectly, to exercise any dominion or control over Panhandle Eastern and from restraining, or interfering in any manner with, the free and independent action of said Panhandle Eastern in the production, transportation, sale or delivery of natural gas to any person, corporation, community or section of the United States; from holding, acquiring, voting or in any manner acting as the owners, directly or indirectly, of the whole or any part of the stock, or other share capital, or bonds, property or assets of Panhandle Eastern or any other company, corporation, association or organization owning any substantial amount of its securities; and from participating in any way, directly or indirectly, or from exercising any control, direction, supervision, or influence, in the management or control of Panhandle Eastern, except;

(a) That defendants may own stock in and obligations of Columbia Gas and Columbia Oil * * *;

(b) That defendants may own stock and obligations in Panhandle Corporation (a separate corporation from Panhandle Eastern) * * *;

(c) That Columbia Gas * * * may own or acquire obligations, without present or potential voting rights, of

said Panhandle Eastern, except that Columbia Gas is hereby enjoined and restrained in connection with enforcing any rights under said obligations with respect to principal, interest, or sinking fund, from acquiring any of the pipe line or other physical assets of Panhandle Eastern;

(d) That Columbia Oil may own or acquire stock or obligations in Panhandle Eastern and exercise voting rights appurtenant thereto * * * subject to the further terms and provisions of this decree, but Columbia Gas is hereby perpetually enjoined and restrained from acquiring any interest in such stock, by operation of law, or in connection [fol. 430] with enforcing any lien created through the present or future existence of any debt, whether funded or unfunded, of Columbia Oil to Columbia Gas, or otherwise;

(e) That, when Columbia Gas has effectively divested itself of all control, direct or indirect, legal or practical, of Panhandle Eastern by no longer owning stock of any class having present or potential voting rights in Columbia Oil, upon the approval of this Court Columbia Oil shall no longer be subject to the restrictive clauses of this Section II;"

On Information and Belief:

IX. Notwithstanding the provisions of said Decree, and in violation thereof, the defendants have continued and are continuing their conspiracy and plan to eliminate Panhandle Eastern from competition in the natural gas industry within the States of Indiana, Michigan, and Ohio,—these being the "certain sections" referred to in the recital of the Decree, above quoted; that the defendants have carried out or attempted to carry out the purposes and objects of said conspiracy and plan by employing, commencing with January 31st, 1936—two days after the entry of said Decree,—the following means:

A. Preventing Panhandle Eastern from owning or controlling any extension of the Panhandle Eastern line east of the Indiana-Illinois line, and to that end by Columbia Gas acquiring for itself full ownership of the extension to Detroit, which passes through the States of Indiana, Ohio and Michigan, and obtaining thereby and by other means a growing monopoly of the distribution and marketing of natural gas in said area;

B. Causing to be created and then acquiring through Columbia Oil, all of a $1,000,000 issue of Class B preferred stock of Panhandle Eastern, which is not subject to be retired and carries the exclusive right to elect two of Panhandle Eastern's nine directors, thereby perpetuating control of Panhandle Eastern;

C. Acquiring (directly by Columbia Oil and indirectly by Columbia Gas) a majority of the common stock of Panhandle Eastern in connection with the Detroit financing;

D. Exercising and attempting to exercise control, direction, supervision and influence in the management and control of Panhandle Eastern; and employing or causing to be [fol. 431] employed by Panhandle Eastern executive officers of the defendants' choosing, including both of the persons who have since the said Decree occupied the office of President of Panhandle Eastern;

and also by other methods, manner and means as hereinafter set forth. The defendants Hillman and Bay participated in some, but not all of the acts herein set forth.

X. After the commencement of this suit and on August 31, 1935, prior to the making and entry of the aforesaid Decree, Panhandle Eastern, which was then completely under the control of the defendants, had entered into an agreement with Detroit City Gas Company, (hereinafter sometimes referred to as the "Detroit Contract") by the terms of which Panhandle Eastern agreed to supply natural gas to the City of Detroit for a period of fifteen years.

XI. At the time the said Detroit Contract was entered into, as well as at the time the said Decree was made and entered herein, the eastern terminus of the Panhandle Eastern natural gas pipe line was at a point called Dana, in the State of Indiana, situated near the Illinois-Indiana state boundary line, which point is indicated on a map annexed hereto, made a part hereof and marked "Exhibit A"; that at said times there was no pipe line connection between the said eastern terminus of the Panhandle Eastern pipe line at Dana, Indiana, and the City of Detroit, Michigan, a distance of more than three hundred miles. Said map shows the Panhandle Eastern Pipe Line and the Columbia System as they existed prior to the commencement of this suit.

XII. The said Detroit Contract contained, among other things, provision for (a) the construction by Panhandle Eastern of a pipe line extension from the eastern terminus of the then existing Panhandle Eastern pipe line to the City of Detroit (hereinafter sometimes referred to as the "Detroit extension"), (b) the reinforcement of the existing pipe line, and (c) the financing of said construction and reinforcement, in terms and words as follows:

"Inasmuch as the carrying out of this Agreement depends upon the construction of a pipe line connecting the eastern terminus of Seller's existing pipe line at the Illinois-Indiana state line with the City of Detroit, as well as on the rein- [fol. 432] forcement of the present pipe line of Seller, since the present line of Seller is inadequate to deliver the quantity of gas called for by this Agreement without reinforcements requiring the expenditure of a large sum of money, and Seller represents that its financial position is such that it cannot construct either said connecting line or said reinforcements without outside financing, it is expressly understood and agreed that, unless the construction of such connecting line shall have been financed on or before February 1, 1936, and unless a contract shall be entered into providing for the financing of said reinforcement of Seller's present pipe line before said date, this Agreement shall be null and void and no obligations hereunder shall exist on the part of either party hereto. Seller agrees to use its best efforts to arrange for financing the construction of such connecting pipe line and such reinforcement of its present pipe line, but does not undertake any firm commitment to do so. If such financing shall be arranged by said date, Seller will construct and place said connecting pipe line in condition for operation on or before the Date of Initial Delivery."

XIII. The right of Panhandle Eastern to construct, own and operate the said extension as provided for in said Detroit Contract was a valuable asset of, and constituted property belonging to, Panhandle Eastern.

XIV. Because of the existence of said contract, and contemplating the construction of said extension, the Decree of this Court (paragraph IV) provided for alternate methods of financing, and further provided that if the Detroit extension and the necessary reinforcement to the main line

of Panhandle Eastern were constructed with financial assistance secured from Columbia Gas, such

"financial assistance (must be) furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment;"

XV. Notwithstanding said Decree and the further provision therein contained that the defendants were perpetually enjoined from acquiring, directly or indirectly, the whole or any part of the property or assets of Pan- [fol. 433] handle Eastern, two days after the entry of said Decree, namely, on January 31, 1936, defendant Columbia Gas, for its own use and benefit, directly acquired from Panhandle Eastern that part of the contract under which Panhandle Eastern owned the right to construct, own and operate the extension from the eastern terminus of the Panhandle Eastern line to the City of Detroit, and by means of its complete control of the Board of Directors of Panhandle Eastern caused the necessary corporate action to be taken to permit such acquisition. Said corporate action was taken before Gano Dunn, Trustee appointed by and under the decree herein had qualified and taken office and before Mokan was represented on the Board of Panhandle Eastern, and was taken at directors' meetings superintended by Charles A. Munroe, one of the defendants above named. Through its wholly owned subsidiary Michigan Gas Transmission Company, Columbia Gas has constructed and now owns and operates said extension, and has received and is now receiving excessive profits therefrom, all in violation of the express provisions of the Decree aforesaid.

XVI. By reason of its ownership and operation of said Detroit extension, Columbia Gas has been enabled to take over, dominate and control the markets available to said Detroit extension in Indiana and southeastern Michigan (except Detroit) and to prevent Panhandle Eastern from entering into competiti in the said markets or in the Ohio markets of the Columbia companies adjacent to said extension; that the map which is hereto annexed and marked

Exhibit B shows the territory in and about the State of Indiana with the pipe lines of Panhandle Eastern and of the Columbia System as they existed prior to the commencement of this suit. The attached map which is marked Exhibit C shows the same territory and the said lines as they existed on January 29, 1936, the date of the Consent Decree herein; and the attached map which is marked Exhibit D shows the location of the said Detroit extension, together with various laterals therefrom which Columbia Gas has constructed to connect with existing artificial and mixed gas lines which are also shown on said map, such extension of the Columbia System having occurred since the entry of the Decree herein and in order that Columbia Gas might control the markets in the aforesaid territory and enlarge its monopoly so as to include said Indiana and Michigan territory; that the City of Toledo, in the State of Ohio, is [fol. 434] twelve miles east of the Detroit extension as shown on said map, and is served by Columbia Gas from its Ohio system; that by owning and operating said Detroit extension, Columbia Gas has prevented Panhandle Eastern from competing in the Toledo market, as well as in the other markets in the territory available to said extension. Under the terms of a contract between Michigan Gas Transmission Corporation and Panhandle Eastern, approved by the Trustee herein, and by the Columbia-dominated Board of Panhandle Eastern, allocation is made of the prices received from the City of Detroit so that an unfair and unreasonable part thereof is paid to and retained by Michigan Gas Transmission Corporation, all to the detriment of Panhandle Eastern, Mokan, and the public.

XVII. The aforesaid Decree provided (Section IV) that:

"financial or contractual arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter";

that the defendants, in violation of the intent of said provisions contained in the said Decree, refused to make available to Mokan or to underwriters who desired to bid on said financing, the necessary financial and other data affecting Panhandle Eastern, or to allow time for the preparation

of a proposal, thus preventing the making of any alternative proposal for the financing of the construction of said extension by Panhandle Eastern, although Panhandle Eastern, if it had not been prevented by the defendants, could itself have readily procured the financing of said extension.

XVIII. In addition to the moneys required for the construction of the aforesaid extension, Panhandle Eastern, for the fulfillment of said Detroit contract, required further moneys for the reinforcement of its own line. The Decree of this Court expressly provided that if such financial assistance were procured from Columbia Gas, it must be furnished, as hereinabove set forth, only upon terms which did not "in any way *directly or indirectly, presently or potentially* confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle [fol. 435] Eastern." Columbia Gas evaded said express provision by causing its controlled affiliate, Columbia Oil, to acquire an additional 80,000 shares of the common stock of Panhandle Eastern shortly after the entry of the said Consent Decree with moneys advanced by Columbia Gas, namely, the sum of $2,000,000, which Columbia Gas advanced to Columbia Oil for the express purpose of enabling the latter to make such payment and to acquire such stock. Said funds when received by Panhandle Eastern were used by it for the said reinforcement of its said line. Such purchase of additional stock gave to Columbia Oil a majority of the common stock of Panhandle Eastern then outstanding, and Columbia Oil still owns such majority, and still owes Columbia Gas said $2,000,000.

Your petitioner avers that while Columbia Oil was and is permitted, under the Decree of this Court, to acquire stock in Panhandle Eastern, such permission was made expressly subject to the further terms of said Decree, including the injunction against acquisition by Columbia Gas of any interest in Panhandle Eastern. Your petitioner further avers that the device herein set out was intended to evade the restraint imposed on Columbia Gas by said Decree, and to enable Columbia Gas to acquire a potential or indirect interest in stock of Panhandle Eastern having voting rights, and substantial control thereof, all in violation of the express terms of the Decree of this Court.

In order that Columbia Oil should retain a majority of the common capital stock of Panhandle Eastern and that

Mokan should not acquire for itself an 80,000 additional shares allocable to Mokan under the laws of the State of Delaware, and in order that Mokan's holdings of common stock of Panhandle Eastern should be less than those of the Columbia Companies, the Columbia Companies demanded and required that said Receivers enter into an agreement to distribute warrants to purchase the 80,000 shares of Panhandle Eastern stock allocable to Mokan to the stockholders of Mokan and to agree that Columbia Oil should be permitted to exercise such warrants as were not exercised by the stockholders of Mokan, and Columbia Oil refused to enter into any agreement with the Receivers which would provide that the Mokan or its Receivers should acquire the said 80,000 shares; that the provisions to that effect contained in the contract between Columbia Gas, Columbia Oil and the Receivers of Mokan, dated June 1st, 1936, are as follows(paragraph III, subdivision (e)):

[fol. 436] "That, when Mo-Kan as a stockholder of Eastern, or the Receivers in its behalf, receive the warrants evidencing rights to subscribe to the 80,000 shares of Common Stock of Eastern, referred to in Subdivision (e) of Article I of this Agreement, Mo-Kan will distribute, or the Receivers will distribute on behalf of Mo-Kan, to such persons as shall present for appropriate notation thereon certificates for Capital Stock of Mo-Kan (which certificate shall either be registered in the names of the persons so presenting them or be duly endorsed and stamped for transfer to such persons) such warrants pro rata except that each Class B share shall be entitled to one-twentieth of the right accorded each share of the Common Stock. That such rights shall not be exercisable by the Receivers or by Mo-Kan but only by the stockholders of Mo-Kan to whom they shall have been distributed or their assignees as above provided, and that all warrants so received by Mo-Kan or the Receivers which shall not have been so distributed shall be allowed to lapse."

and

"That it (Columbia Oil) will, with the cooperation of the Receivers, cause Eastern to deliver to the Receivers, when requested by them, on such reasonable notice as shall suffice for preparation and printing, in order that they may distribute the same to the stockholders of Mo-Kan, as herein-

after provided, transferable subscription warrants evidencing the subscription rights referred to in the foregoing Subdivision (b) of this Article I. That it will purchase any shares not so subscribed for by said stockholders at the price of $25 per share." (Par. I, subd. (c).);

that thereby Columbia Gas attempted to insure its control and domination of Panhandle Eastern through its control of Columbia Oil.

XIX. Columbia Oil was incorporated on May 14, 1930 for the purpose of taking over the oil and gasoline properties of Columbia Gas and its subsidiaries, and in consideration of the transfer of such properties to Columbia Oil, Columbia Oil issued to Columbia Gas 337,500 shares of $6.00 first preferred stock, 337,500 shares of $6.00 second preferred stock, and 2,340,655 shares of common stock without par value.

The said common stock was put in a voting trust under which Voting Trust Certificates were issued to the holders of common stock of Columbia Gas in the ratio of one share [fol. 437] of stock of Columbia Oil for every five shares of stock of Columbia Gas. Columbia Gas at all times controlled the Voting Trustees of said Voting Trust. As of January 1, 1936 there were outstanding Voting Trust Certificates representing 2,336,826 shares.

Prior to January, 1936 Columbia Gas advanced an aggregate of $32,232,652.24 to Columbia Oil to enable Columbia Oil to acquire securities of Panhandle Eastern, for which advances Columbia Gas held on January 1, 1936 6% demand notes of Columbia Oil secured by a pledge of all the securities of Panhandle Eastern owned by Columbia Oil, and in addition thereto Columbia Gas advanced to Columbia Oil prior to said date the further sum of $1,892,071.75 to enable Columbia Oil to acquire stock and notes of Indiana Gas Transmission Company, for which advances Columbia Gas held on January 1, 1936 6% one-year notes (renewed from year to year) of Columbia Oil, secured by a pledge of all the securities of Indiana Gas Transmission Company owned by Columbia Oil. Said Indiana Gas Transmission Company owned the pipe line shown in green on the map which is hereto attached as Exhibit C.

Following the entry of the consent decree herein, and in purported compliance therewith, Columbia Gas caused its

subsidiary Columbia Oil to be recapitalized. Pursuant to such recapitalization the following changes were effected:

(a) As of January 31, 1936, Columbia Oil sold the stock and notes of Indiana Gas Transmission Corporation to Columbia Gas in satisfaction of the $1,892,071.75 of one-year promissory notes. Indiana Gas Transmission Company was subsequently absorbed by Michigan Gas Transmission Corporation, a wholly owned subsidiary of Columbia Gas which was created by Columbia Gas to own and operate its new acquisitions in Indiana and Michigan.

(b) Columbia Oil created an issue of Twenty-Year Debentures, Maturing February 1, 1956, bearing interest at varying rates, beginning at 3% and increasing to 6% per annum after February 1, 1940, and limited to an aggregate principal amount of $30,000,000.

(c) The $32,232,652.24 secured demand indebtedness of Columbia Oil to Columbia Gas was liquidated as follows:

[fol. 438]

Sale to Columbia Gas of $14,574,500 principal amount of Panhandle Eastern Pipe Line Company 6% Mortgage Bonds	$14,574,500.00
Issuance of Twenty-Year Debentures at par	17,658,000.00
Paid in cash	152.24
Total	$32,232,652.24

(d) The Certificate of Incorporation of Columbia Oil was amended (a) to change the existing classes of First and Second Preferred Stock held by Columbia Gas (including all dividends in arrears thereon) into 400,000 shares of new Non-Cumulative Participating Preferred Stock of a single class, entitled to elect a minority of the directors, and (b) to give the Common Stock the right to elect, by cumulative voting, a majority of the directors. The exchange of Preferred Stocks was made on May 28, 1936.

The new preferred stock of Columbia Oil (which has ever since May 28, 1936 been held by Columbia Gas) bears preferential non-cumulative dividends at the rate of One dollar per share in 1938, the rate increasing fifty cents per share each year until 1946 when the rate becomes fixed at Five Dollars per share. It has first preference as to assets to the extent of One hundred and ten dollars per share, participates equally as a class with the common stock in

dividends, and after certain payments to the common stock participates in liquidation or in dissolution equally as a class with the common stock in the remaining assets.

The 3,829 shares of Common stock of Columbia Oil against which no Voting Trust Certificates were outstanding were cancelled, the voting trust was terminated in May, 1936 and the remaining common stock was distributed to the holders of Voting Trust Certificates.

Since the said recapitalization of Columbia Oil, Columbia Gas has advanced to it an additional sum of $3,342,000 for which it has received additional Twenty-year Debentures, so that the total indebtedness of Columbia Oil to Columbia Gas is at present $21,000,000. As of April 1, 1938 Columbia Gas was still obligated to advance to Columbia Oil an additional sum of $942,000 in connection with the recapitalization and is further obligated to advance to Columbia Oil up to $2,000,000 for the purpose of acquiring additional stock of Panhandle Eastern by exercising the above-men- [fol. 439] tioned warrant of Mokan to the extent the same is not exercised by Mokan stockholders, as stated in paragraph XVIII.

The Board of Directors of Columbia Oil on December 21, 1938, the time of the filing of the supplemental complaint hereafter referred to in Paragraph XXXV consisted of seven members. Three members were elected by the preferred stock held by Columbia Gas and four members by the common stock of Columbia Oil, the controlling stockholders of whom are substantially identical with the stockholders of Columbia Gas. The three directors of Columbia Oil who had been elected by Columbia Gas, and who were serving at the time of the said filing of the said supplemental complaint herein, were Walter C. Beckjord, director, vice-president, general manager and chairman of the Executive Committee of Columbia Gas, the defendant Edward Reynolds, president, director and a member of the Executive Committee of Columbia Gas, and Harry A. Wallace, vice-president and director of Columbia Gas. The remaining four directors of Columbia Oil who were serving at the said time of the filing of the supplemental complaint herein and who were elected by the management of Columbia Oil as holders of proxies from the common stockholders, were the following:

The defendant, Charles A. Munroe, who for many years and up to June 7, 1934 was director of Columbia Gas; Wil-

liam P. Philips, who had been for many years and was until 1930 a director of Columbia Gas; Don M. Wilson, who had prior thereto and until March 11, 1937 been an officer and director of various subsidiaries of Columbia Gas, and one William Falion.

In April of 1938 the defendant Phillip G. Gossler, Chairman of the Board of Columbia Gas, together with members of his immediate family, owned 5.3% of the common stock of Columbia Oil. Other officers, directors and employees of Columbia Gas held at said time approximately 4% of said common stock. United Corporation, a corporation of the State of Delaware, the largest single stockholder of Columbia Gas, owning 2,424,356 shares thereof, or about 19½% of the total outstanding stock of Columbia Gas, owned 84,769 shares of the common stock of Columbia Oil, representing 3.6% of the outstanding common stock. The President of said United Corporation was at the time of the commencement of this action and still is the defendant George H. Howard. The said Howard was also a director of Columbia Gas, but resigned after this suit was instituted. [fol. 440] Columbia Gas and Columbia Oil have had since 1930 and now have numerous intercorporate agreements relating to the interchange of gas and oil and other matters. Said corporations have offices on adjoining floors in the City of New York, N. Y., and in the same building in Wilmington, Delaware. The important executive positions in Columbia Oil are held by former executives of Columbia Gas. Columbia Gas and Columbia Oil are in effect identical in respect of management and control.

XX. On the date the aforesaid Decree was entered, the defendant Columbia Oil owned or controlled $9,891,000 face amount of notes of Panhandle Eastern, which with accrued interest amounted to approximately $10,700,000; that in order further to insure and perpetuate to themselves control of Panhandle Eastern, the Columbia Companies caused Panhandle Eastern in connection with said recapitalization thereof, to issue to defendant Columbia Oil two classes of preferred stock of the aggregate par value of $11,000,000, of which $10,000,000 was denominated as Class A participating preferred stock and was redeemable at par, and $1,000,000 was denominated as Class B preferred stock; that said Class B preferred stock contained provisions granting the right to the holders thereof to elect as a class two directors

of Panhandle Eastern, and provided that such stock should not be subject to redemption; that said Class A and Class B preferred stock were thereupon issued to Columbia Oil in exchange for and in retirement of the said notes; that by the creation of said Class B preferred stock in the par amount of $1,000,000, Columbia Oil secured for itself direct control, and Columbia Gas secured for itself indirect control, of the entire property of Panhandle Eastern, which has a value of more than $67,000,000; that said recapitalization as aforesaid was part of the scheme, device and plan of the Columbia Companies and the individual defendants (except Hillman and Bay, whose participation was limited, as above set forth) to acquire and perpetuate their control of Panhandle Eastern, all in violation of the Decree of this Court. Corporate action necessary to effect such recapitalization was taken at meetings of directors superintended by Charles A. Munroe, one of the defendants in this action, all in violation of the Decree herein. Six of the nine directors of Panhandle Eastern at the time of the filing of the Supplemental Complaint hereinafter referred to on December [fol. 441] 21, 1938, represented the stock ownership of Columbia Oil, and still represent said ownership.

XXI. After the Columbia Companies had procured (a) the ownership of the aforesaid Detroit extension, (b) additional common stock of Panhandle Eastern, (c) the dilution of the interest of Mokan as a stockholder of Panhandle Eastern, and (d) the Class B preferred stock of Panhandle Eastern carrying with it the right to elect the controlling members of the Board of Directors of Panhandle Eastern, the said Columbia Companies thereupon, in further violation of the express terms of the Decree of this Court, and through the use of said Detroit extension acquired from Panhandle Eastern as aforesaid, contrived to and did effect arrangements with Panhandle Eastern for the transportation of gas through the Detroit extension, so as to secure to themselves a further monopoly in the commerce of natural gas in Indiana, Ohio and Michigan, by causing Panhandle Eastern to enter into an agreement of March 17th, 1936 with the Michigan Gas Transmission Corporation, the wholly-owned subsidiary of Columbia Gas, which provided in part as follows (Panhandle Eastern is referred to as "Eastern", and Michigan Gas Transmission Corporation as "Michigan"):

"4. If at any time in the future, while this Agreement remains in force, *Eastern has additional natural gas which is available for ultimate distribution in the territory then reached by the pipe lines of Michigan,* then (a) if Eastern has obtained a contract for the sale of such gas in such territory, Eastern shall have the right to require Michigan to accept and Michigan will accept such gas from Eastern at the Place of Delivery specified herein and will deliver such gas, provided, that Michigan shall be entitled to retain, out of payments made by the purchaser of such additional gas, not less than the amount which it would be entitled to retain if such additional gas were sold and accounted for on the same basis as the gas (other than gas delivered for ultimate resale to Special Industrial Customers) specified in Section 2 of this Article II; or (b) if Michigan has obtained a contract for the sale of such gas in such territory, Michigan shall notify Eastern thereof and within fifteen days thereafter Eastern may by notice in writing require Michigan to assign and Michigan will assign such contract to it and Eastern shall then have the same rights with respect to such contract so assigned as are specified in subdivision (a) [fol. 442] of this Section 4 or if Eastern does not elect to have such contract assigned to it, then (1) Michigan shall have the right to purchase such gas from Eastern for such resale, at a price calculated to yield Eastern the price set forth in Section 2 of Article VII hereof, and (2) Eastern shall have the right at any time when it may have such gas available on a firm basis (whether or not a supply of natural gas has been contracted for by Michigan elsewhere) to supply such gas to Michigan at a price (taking all factors into consideration) not less favorable to Michigan than the price at which such gas could otherwise be obtained by Michigan; provided, in any case, that the capacity of Michigan's pipe line and compressor station facilities shall be sufficient to carry such additional gas without interfering with its ability to supply the actual requirements of Detroit Company under the Detroit Contract and of any present firm commitments of Michigan (not exceeding 2,250,000,000 cubic feet per year) and of any prior firm commitments hereafter incurred of Michigan or Eastern which are supplied by gas furnished by Eastern." (Italics added.)

XXII. The purpose, intent and effect of the contract, from which the foregoing provision is quoted, was to enable

Columbia Gas to contract with the various municipalities and distribution systems located along said extension in Indiana, Ohio and Michigan, for the sale by Columbia Gas of Panhandle Eastern's gas to such communities at prices and on terms satisfactory to Columbia Gas and to enable Columbia Gas further to dominate and control the sale of natural gas in the States of Ohio, Indiana and Michigan. Columbia Gas at the time of the making of said contract controlled the executive management of Panhandle Eastern and well knew that the gas reserves of Panhandle Eastern were more than adequate to supply the total capacity of Panhandle Eastern's Pipe Line and that there would be at all times "additional natural gas which is available for ultimate distribution in the territory then reached by the pipe lines of Michigan (Gas)", and intended thus to contrive and did contrive that Columbia Gas should have control of any gas of Panhandle Eastern that was available for ultimate distribution in the territory that might be then reached by the pipe lines of Michigan Gas Transmission Corporation and to exact for itself an unreasonable and unfair price for such gas, in order that the price structure of the Columbia system in Indiana and Michigan and more particularly in Ohio, should not be affected. The defendants (except [fol. 443] Hillman) have agreed between themselves and with the management of Panhandle Eastern that the contracts between Panhandle Eastern and Michigan Gas Transmission Corporation should be construed so as not to permit Panhandle Eastern to sell gas for industrial use directly in the territory reached by the line of Michigan Gas Transmission Corporation or to require the line of Michigan Gas to carry the same, with the result that Panhandle Eastern has been prevented from offering gas for industrial use in Indiana, Ohio and Michigan, particularly in the Toledo area, although it could have sold great quantities of the same.

The provision of said contract to the effect that Panhandle Eastern might require Michigan Gas to transport gas to the territory served by the Michigan Gas line in the event that Panhandle Eastern should itself obtain markets along said line has never been availed of by Panhandle Eastern, by reason of the domination by Columbia Gas of the management of Panhandle Eastern. Said provision, even if availed of, requires Panhandle Eastern to pay an unreasonable tribute to Columbia Gas on all gas so transported and ef-

fectively prevents Panhandle Eastern from entering into any free competition in the Indiana and Michigan markets. The Indiana market is further assured to Columbia Gas by the fact that Panhandle Eastern, pursuant to its contractual arrangements which the Columbia Companies caused to be made between Panhandle Eastern and Michigan Gas Transmission Corporation, is required by Michigan Gas to pay the same rate for the transportation of its gas to points in Indiana, near the beginning of the Michigan Gas line, as is paid for transportation to points in Michigan at the end of said line, 300 miles distant. Pursuant to an arrangement between Panhandle Eastern and Michigan Gas Transmission Corporation made on or about March 30, 1936, said Michigan Gas Transmission receives directly from Detroit City Gas Company the funds paid by the latter company for Panhandle Eastern's gas, and remits to Panhandle Eastern the balance thereof after deducting its charges.

Panhandle Eastern has made no serious effort to reach any markets along said Michigan Gas line or elsewhere in Ohio or Michigan. Panhandle Eastern is still neglecting to sell its gas in the markets of Indianapolis, Ind., Kansas City, Mo. and St. Louis, Mo. as was alleged in Paragraph 28 of the Amended Petition of the United States, hereinbefore referred to and filed on October 30, 1935. The extent [fol. 444] to which the available markets have already been secured by Columbia Gas is shown by the map attached hereto and marked Exhibit D.

XXIII. In the year 1937 a meeting of the stockholders of Mokan was held under the supervision of the Chancery Court of the State of Delaware, for the purpose of electing a Board of Directors of Mokan who would manage its affairs after its assets, consisting principally of stock of Panhandle Eastern, should be returned to it by its Receivers. The defendants or some of them sought at such meeting to obtain control of Mokan for their own purposes, and to that end expended large sums of money in soliciting proxies and in purchasing or causing to be purchased stock of Mokan. Such acts were done with the intent and purpose of dominating and influencing Panhandle Eastern and in violation of the express terms of the Decree of this Court.

XXIV. That by the Decree of this Court, one Gano Dunn, Esq., was nominated, constituted and appointed as Trustee,

to hold the capital stock of Panhandle Eastern owned by the defendant Columbia Oil, to vote the same for Directors nominated in the first instance by Columbia Oil, and to act himself as a Director of Panhandle Eastern; and that ever since on or about February 3rd, 1936, the said Gano Dunn has acted, and is now acting, as such Trustee. He has pursuant to said Decree been compensated for his said service with funds provided in equal shares by the defendants Columbia Gas and Columbia Oil.

XXV. That since his appointment as such Trustee, the said Gano Dunn has flagrantly used his position for his personal advantage and in breach of his trust, in that:

(a) On or about October 20, 1936, he caused and permitted Panhandle Eastern to employ the J. G. White Engineering Corporation, to make an examination and report on the properties of Panhandle Eastern and caused and permitted Panhandle Eastern to pay fees therefor aggregating $25,000. Said Gano Dunn was and is President and the active head of said J. G. White Engineering Corporation, which at the time of its designation to make such report was wholly unequipped by experience so to do.

[fol. 445] (b) In March, 1937, Panhandle Eastern desired to market an issue of its first mortgage bonds in the amount of $24,000,000. Said Gano Dunn rejected suggestions that the said issue be sold competitively and caused said issue to be sold to a banking syndicate organized and headed by a banking firm with which one Ashton Hawkins, his nephew, was associated. Said Hawkins had been placed on the Panhandle Eastern Board by the said Trustee early in 1936, after the consent decree above referred to, and continued as such director until the summer of 1938, when he was requested by the United States Department of Justice to resign.

XXVI. That said Gano Dunn, as such Trustee, has ever since his appointment exceeded his powers, in that he has assumed to dictate the affairs of Panhandle Eastern and to supply without authority a species of "executive leadership" which has at all times effectuated the purposes of the Columbia Companies hereinbefore alleged; he failed and neglected to cause Panhandle Eastern to seek any markets in Indiana, Ohio or Michigan, or to enter into any competition with Columbia Gas, although meanwhile he

has permitted Columbia Gas to acquire said markets without competition. While refusing to permit Panhandle Eastern to take over firm sales in the State of Indiana, he has nevertheless permitted Panhandle Eastern to sell large quantities of gas to Columbia Gas (i. e., to Michigan Gas Transmission Corporation) at low or dump prices, and Columbia Gas in turn, well knowing that such supply of gas would not fail for lack of capacity, entered into long term contracts to supply Indiana markets at high or firm prices, and under and by virtue of such contracts dominates and will continue to dominate same for many years. He has at all times approved or failed to prevent the acts of the defendants hereinabove set out. He has appointed executive officers of Panhandle Eastern who were selected by Columbia Gas. He has failed to make report to this Court of acts of the defendants which he was advised constituted contempt of said Decree. He undertook to and did extend aid and assistance to agencies of one or more of the defendants herein who sought at the 1937 annual meeting of stockholders of Mokan, the only other stockholder of Panhandle Eastern, to obtain control thereof. He refused for a long time to permit Mokan to select and have the full number of directors on the Board of Panhandle Eastern to which Mokan was entitled; and he has permitted the [fol. 446] Columbia companies to influence the management and directorate of Panhandle Eastern in violation of the decree.

XXVII. The Decree herein provides that the said Trustee shall be subject to removal at the discretion of the Court.

XXVIII. That said Decree was predicated on the complete divestiture by Columbia Gas, within a reasonable time, of all control, legal or practical, direct or indirect of Panhandle Eastern by

(a) No longer owning stock of any class having present or potential voting rights in Columbia Oil, or

(b) Causing Columbia Oil to divest itself of all Panhandle Eastern stock;

that although a reasonable time has long since elapsed to complete such divestiture, Columbia Gas has not proceeded under either (a) or (b) above, but on the contrary and since the date of the Decree has increased its control of Colum-

bia Oil and has caused Columbia Oil in turn to increase its ownership of Panhandle Eastern voting securities.

XXIX. That the Decree further provided as follows (Section V):

"That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

XXX. That the Intervenor, Missouri-Kansas Pipe Line Company, is the same corporation by that name mentioned and referred to in said Amended Petition of the United States in this cause, and in the Stipulation incorporated in said Decree. That Mokan is substantially interested in the subject matter of this suit and its interests are affected by this suit and by the said Decree herein and will be further affected by the further proceedings to be had in this Court pursuant to the Supplemental Petition of the United States. Intervenor's principal asset is its common [fol. 447] stock of Panhandle Eastern, amounting to 324,326 shares of the 728,652 common shares outstanding, and constitutes all the outstanding stock of Panhandle Eastern except that which is owned by Columbia Oil as aforesaid. Intervenor has by the said acts of said defendants been injured in its property in that Panhandle Eastern has, notwithstanding its ample reserves of natural gas and the ample capacity of its pipe line, been prevented from availing itself of new markets in the states of Indiana, Michigan and Ohio, and has acquired no substantial new markets since the date of said Decree except by sales to Michigan Gas Transmission Corporation which, as hereinabove alleged, is a wholly owned subsidiary of Columbia Gas. Intervenor has also been injured in its property by the acts of the said Trustee as aforesaid. Said Decree, if construed to permit the acts hereinbefore alleged, injures the property of this Intervenor in that the defendant Columbia Gas, while claiming to act under the provisions of said

Decree, in truth has evaded and violated the same and has secured its monopoly of the Indiana and Ohio markets and has prevented Panhandle Eastern from selling natural gas in said states and in Michigan (except Detroit) otherwise than through the line of Michigan Gas Transmission Corporation, and in that Panhandle Eastern has paid excessive charges to said Michigan Gas Transmission Corporation.

XXXI. That if plaintiff is not permitted to participate in this action, Mokan will by reason of the facts hereinbefore alleged suffer great injuries for which it will have no adequate redress.

XXXII. The stock of Panhandle Eastern Pipe Line Company, beneficially owned by Columbia Oil, is in the custody of an officer of this Court, to wit, Gano Dunn, appointed by this Court's said Decree, above referred to. Intervenor is so situated as to be affected by the disposition of said property, as prayed for by the United States in its Supplemental Complaint herein, and will be adversely affected unless said disposition is made to parties wholly independent of and disconnected with any of the defendants herein, and may be bound by the Decree to be entered herein. The representation of intervenor's interest by existing parties may be inadequate.

XXXIII. That this Petition is filed by Mokan as the owner of a substantial interest in the capital stock of Pan- [fol. 448] handle Eastern as aforesaid, both in its own right and also in behalf of and for the benefit of Panhandle Eastern for the reason that Panhandle Eastern has refused to intervene herein and to assert its rights arising out of the said violations of the said Decree.

XXXIV. Receivers of Mokan were appointed by the Chancellor of the State of Delaware in March, 1932. Said receivers managed the property and affairs of Mokan until on or about October 15, 1937, when the principal assets of Mokan, including its Panhandle Eastern common stock, were returned to Mokan by order of said Chancellor. The Board of Directors of Mokan and its officers were not elected until August 17, 1937.

XXXV. That on December 21, 1938, the petitioner, the United States of America, filed herein its motion for leave

to serve a supplemental complaint, which supplemental complaint was attached to said motion. Said supplemental complaint, which is hereby made a part hereof as if fully set forth, alleged in part as follows:

"The course of events since the entry of said decree on January 29, 1936, has made it increasingly clear (1) that the only effective way to restore and maintain a position of free and independent action for Panhandle Eastern is to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern, as contemplated by the last paragraph of section III of said decree, and (2) that to accomplish the purpose of said decree, it is necessary to supplement said decree by a further order requiring the formulation and submission to this Court for approval of a suitable plan or plans to accomplish such divestiture. * * *"

Said supplemental complaint prayed:

"That this honorable Court exercise the jurisdiction retained by it in section V of said decree of January 29, 1936, for the purposes therein stated, to wit, to give full effect to said decree and to make such other and further orders and decrees and to take such action as may be necessary to the carrying out thereof, and enter a judgment herein to the following effect:

[fol. 449] 1. Adjudging that, in order to achieve the declared primary purpose of said decree of January 29, 1936, namely, to restore Panhandle Eastern to, and maintain Panhandle Eastern in, a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others, it is necessary to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern."

and prayed for other relief. That on or about January 12, 1939, an order of this Court was entered herein directing the defendants herein to answer said supplemental complaint.

Wherefore, petitioner prays:

1. That the defendants be adjudged guilty of contempt for failure to comply with and for having violated the terms, conditions and provisions of the Decree of this Court entered herein on January 29th, 1936.

2. That said Decree be interpreted, enlarged and enforced as follows:

(a) That it be decreed that Columbia Gas holds as trustee for Panhandle Eastern its pipe line from Dana to Zionsville, Indiana, and from Zionsville to Detroit, Michigan, and that Columbia Gas be ordered and directed forthwith to transfer said line to Panhandle Eastern upon such terms and conditions for the security of its investment therein as this Court may deem just and to account to Panhandle Eastern for the issues and profits thereof.

(b) That Columbia Gas be ordered and directed forthwith to cause Michigan Gas Transmission Corporation to fransfer to Panhandle Eastern any and all contracts or agreements for the supply of gas entered into with any municipalities, persons, firms or corporations in the States of Indiana, Michigan and Ohio, since the entry of the said Decree.

(c) That Columbia Oil be ordered forthwith to surrender to Panhandle Eastern at cost for cancellation its Class B preferred stock of Panhandle Eastern and 80,000 shares of the common stock of Panhandle Eastern.

[fol. 450] (d) That Columbia Oil be ordered forthwith to sell its remaining stock of Panhandle Eastern to a purchaser or purchasers and upon terms to be approved by this Court.

(e) That the exceptions set forth in Article II of the decree be stricken out.

3. That Gano Dunn be removed as Trustee, and that a new Trustee be appointed pending divestiture by Columbia Oil of its Panhandle Eastern securities.

4. That such other or further relief may be granted as to the Court may seem just and equitable.

And your Petitioner will ever Pray.

Missouri-Kansas Pipe Line Company, by W. C. Tringham, Treasurer, Petitioner.

Biggs & Lynch, by Stewart Lynch, Solicitors for Petitioner.

[fol. 451] UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 3rd day of February, A. D., 1939, personally appeared before me, the subscriber, a notary public for the district aforesaid, William C. Tringham, who, being by me first duly qualified according to law, did depose and say:

That he is Secretary of Missouri-Kansas Pipe Line Company, the corporation created by and existing under the laws of the State of Delaware, the petitioner in the foregoing petition, and that what is set forth in the foregoing petition, so far as the same relates to his own act and deed or to the act and deed of said complainant is true, and so far as the same relates to the act and deed of any other person or persons or to matters alleged on information and belief he believes the same to be true; that he executed the foregoing petition on behalf of said company under and by virtue of a resolution of the Board of Directors of said company authorizing him thereto, and that the seal affixed to said petition is the common and corporate seal of said corporation and was likewise affixed by authority of the Board of Directors thereof; that the Receivers of Missouri-Kansas Pipe Line Company, appointed by the Chancellor of the State of Delaware, were shareholders of Panhandle Eastern Pipe Line Company from on or about June 1, 1936 until on or about October 15, 1937, at which time the said shares devolved upon Missouri-Kansas Pipe Line Company by operation of law and have since been held by it; that this action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction; that on January 30, 1939, the Board of Directors of Panhandle Eastern Pipe Line Company, by a majority vote, resolved not to cause Panhandle Eastern Pipe Line Company to apply for intervention in this cause for the purpose of alleging the restraints which have been imposed upon said Panhandle Eastern Pipe Line Company in the free distribution of natural gas in competition with others and praying for the appointment

[fol. 452] of a trustee to hold the properties of Michigan Gas Transmission Corporation.

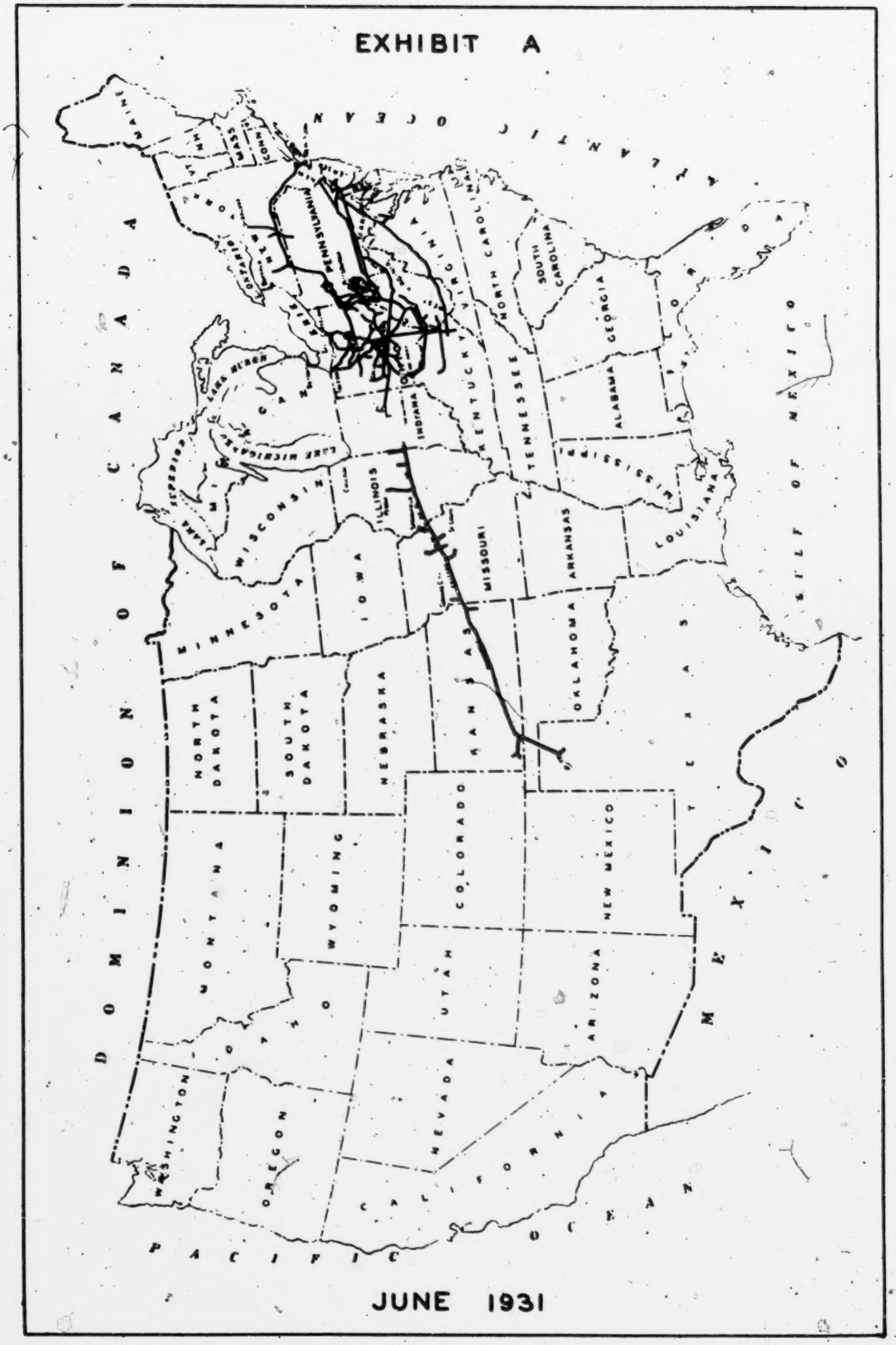
William C. Tringham.

Sworn to and subscribed before me, the day and year aforesaid. Dorothy D. Sheppard, Notary Public. Queens Co. Clks. No. 1781, Reg. No. 6628. N. Y. Co. Clks. No. 1201, Reg. No. 9S825. Commission expires March 30, 1939.

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EXHIBIT A



JUNE 1931

ENLARGEMENT OF EXHIBIT A

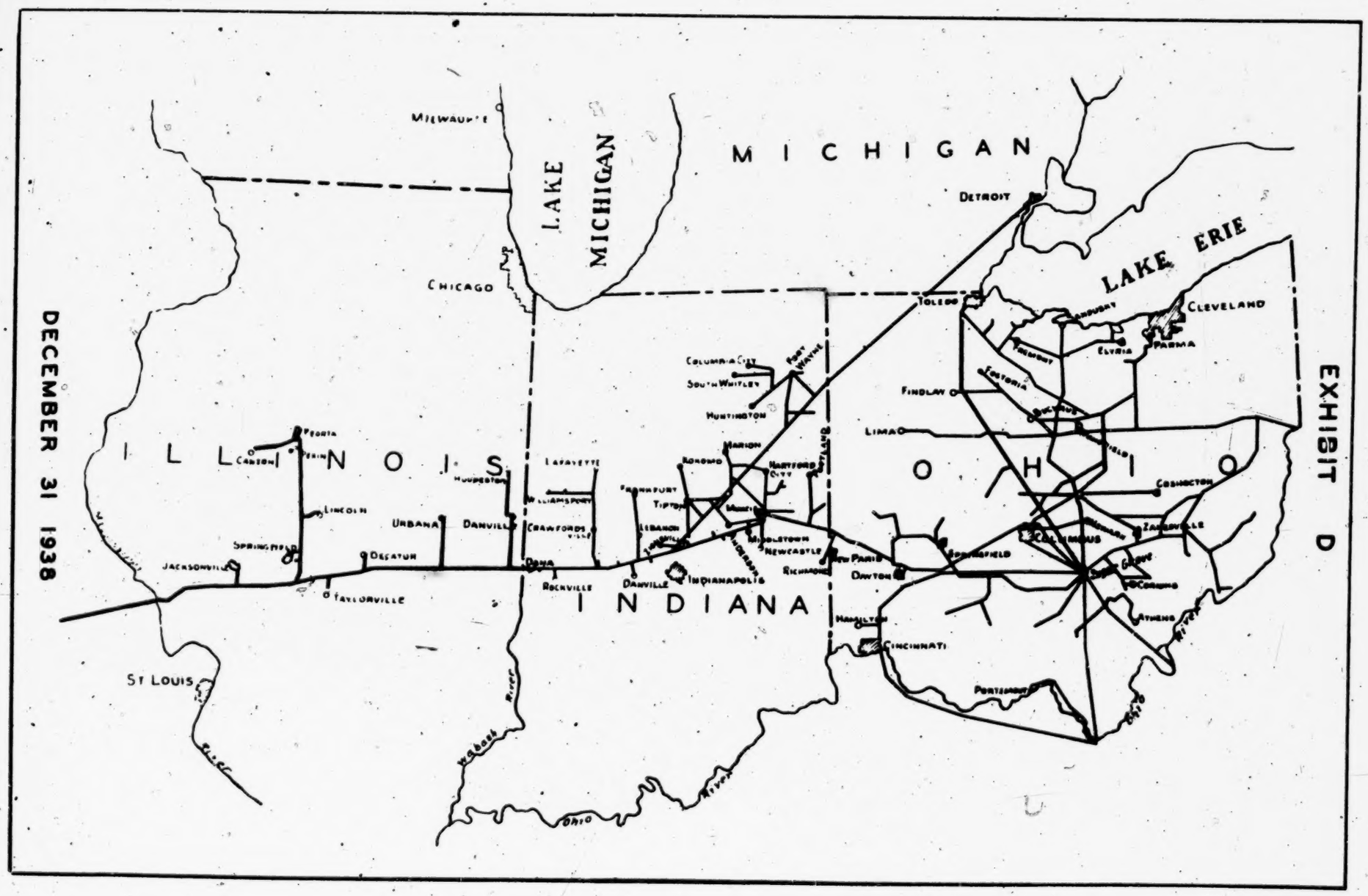
MILWAUKEE
CHICAGO
LAKE MICHIGAN
MICHIGAN
DETROIT
LAKE ERIE
CLEVELAND
TOLEDO
FREMONT
FINDLAY
CANTON
LIMA
OHIO
COSHOCTON
ZANESVILLE
COLUMBUS
SPRINGFIELD
NEW PARIS
DAYTON
SIDNEY
CORNING
ATHENS
HAMILTON
CINCINNATI
PORTSMOUTH
OHIO RIVER
PEORIA
CANTON
HOOPESTON
LINCOLN
URBANA
DANVILLE
SPRINGFIELD
DECATUR
DANA
JACKSONVILLE
TAYLORVILLE
ILLINOIS
INDIANAPOLIS
INDIANA
WABASH RIVER
ST. LOUIS
MISSISSIPPI RIVER

EXHIBIT B

JUNE 1931

JANUARY 29 1936

EXHIBIT C



DECEMBER 31 1938

EXHIBIT D

of the supplemental complaint herein marked "I" and entitled "Summary of relevant provisions of the decree of January 29, 1936", sufficient to form a belief as to the truth thereof, except that defendant admits that a certain decree was entered herein on or about January 29, 1936, and defendant respectfully refers to the original of said decree filed with this Court for all the terms and provisions thereof.

2. Said defendant denies that he has any knowledge or information of any of the allegations contained in that part of the supplemental complaint herein marked "II" and entitled "Developments since entry of the decree of January 29, 1936", sufficient to form a belief as to the truth thereof.

3. Said defendant alleges that he has no right, title, interest or claim in or to the subject matter of the supplemental complaint herein and that no claim or demand of any nature whatsoever is alleged or asserted against defendant in said supplemental complaint.

[fol. 460] Wherefore, defendant prays judgment dismissing the complaint herein as against defendant John H. Hillman, Jr., with costs.

(Sgd.) H. F. Reindel, Caleb S. Layton, Solicitors for Defendant, John H. Hillman, Jr.

[fol. 461] IN UNITED STATES DISTRICT COURT

OPINION OF THE COURT ON MOTION OF MISSOURI-KANSAS PIPE LINE COMPANY FOR LEAVE TO INTERVENE—Filed March 29, 1939

Motion for Leave to Intervene *

Missouri-Kansas Pipe Line Company, a Delaware corporation, moves the court for an order granting it leave to intervene in this proceeding and to file the petition annexed

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* In the interest of brevity, Columbia Gas & Electric Corporation will be referred to in this opinion as "Columbia Gas", Columbia Oil & Gasoline Corporation as "Columbia Oil", Panhandle Eastern Pipe Line Company as "Panhandle Eastern" and Missouri-Kansas Pipe Line Company as "Mokan".

to its motion and requiring defendants respectively to answer or otherwise plead thereto.

Petitioner alleges it owns 324,326 shares of the 728,652 shares of the outstanding common stock of Panhandle Eastern Pipe Line Company.

This suit in equity was brought by the Attorney General of the United States under the Anti-Trust acts. The defendants duly answered and denied the material allegations of the bill. Upon a stipulation between the parties to this cause a consent decree (hereinafter referred to as "consent decree") was entered on January 29, 1936. Section V of the decree provided:

[fol. 462] "That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

December 21, 1938 United States of America filed its supplemental complaint praying, inter alia, that this court exercise the jurisdiction retained by it in section V above recited and in order to give full effect to said decree that this court enter judgment:

"3. Directing Columbia Gas to divest itself of all control, direct or indirect, legal or practical, of Panhandle Eastern, * * *.

(a) Directing Columbia Oil to proceed straightway to formulate and submit to this court for approval, * * * a plan for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern;

(b) Directing Columbia Gas to proceed straightway to formulate and submit to this court for approval, as an alternative to any plan submitted by Columbia Oil pursuant to paragraph (a), * * * a plan for the sale or other disposition by it of all interest which it may have in any securities having present or potential voting rights in Columbia Oil.

4. Reconstituting the voting trust established pursuant to said decree of January 29, 1936, so as:

(a) To make the voting trustee a trustee for sale, * * *" for a limited term and with powers and duties appropriately defined.

The time for answer was extended by stipulation and the answer has not been filed to the Government's supplemental complaint.

[fol. 463] February 6, 1939 Mokan filed its motion for leave to intervene in this suit and to file the petition annexed to its motion. The prayers of this petition are:

"1. That the defendants be adjudged guilty of contempt for failure to comply with and for having violated the terms, conditions and provisions of the Decree of this Court entered herein on January 29, 1936.

2. That said Decree be interpreted, enlarged and enforced as follows:

(a) That it be decreed that Columbia Gas holds as trustee for Panhandle Eastern its pipe line from Dana to Zionsville, Indiana, and from Zionsville to Detroit, Michigan, and that Columbia Gas be ordered and directed forthwith to transfer said line to Panhandle Eastern upon such terms and conditions for the security of its investment therein as this Court may deem just and to account to Panhandle Eastern for the issues and profits thereof.

(b) That Columbia Gas be ordered and directed forthwith to cause Michigan Gas Transmission Corporation to transfer to Panhandle Eastern any and all contracts or agreements for the supply of gas entered into with any municipalities, persons, firms or corporations in the States of Indiana, Michigan and Ohio, since the entry of the said Decree.

(c) That Columbia Oil be ordered forthwith to surrender to Panhandle Eastern at cost for cancellation its Class B preferred stock of Panhandle Eastern and 30,000 shares of the common stock of Panhandle Eastern.

(d) That Columbia Oil be ordered forthwith to sell its remaining stock of Panhandle Eastern to a purchaser or purchasers and upon terms to be approved by this Court. --

(e) That the exceptions set forth in Article II of the decree be stricken out.

3. That Gano Dunn be removed as Trustee, and that a new Trustee be appointed pending divestiture by Columbia Oil of its Panhandle Eastern securities.

[fol. 464] 4. That such other or further relief may be granted as to the Court may seem just and equitable."

In prayer 1 Mokan seeks to raise a question of contempt by defendants in respect to alleged violations of the consent decree of January 29, 1936. By subdivisions (a) and (b) of prayer 2 Mokan seeks to raise a complicated question of property in a transmission line owned by Michigan Gas Transmission Corporation, a subsidiary of Columbia Gas, and extending from the terminus of Panhandle Eastern at Dana, Indiana to Detroit, Michigan. By subdivision (c) of prayer 2 Mokan seeks to procure the retirement of 80,000 shares of common stock of Panhandle Eastern now held by Columbia Oil. By prayer 3 Mokan seeks to have the past conduct of the trustee appointed under the consent decree of January 29, 1936 inquired into in order that he may be removed for alleged violations of his trust. The statement of these prayers indicates how far they depart from the scope of the supplemental complaint and how serious a delay would be involved in the determination of the questions raised thereby.

Intervention of Right

Intervention of right is governed by subdivision (a) of Rule 24 of the Federal Rules of Civil Procedure:

"(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof."

[fol. 465] Courts are unanimous in requiring prompt action on the part of an intervenor who seeks to assert rights

in a suit to which he is not a party. The new rule above quoted requires that application for intervention be timely. It begins with the words "Upon timely application * * *." The matters of which petitioner complains,—the acquisition by Columbia Gas of ownership of the Detroit extension, the acquisition by Columbia Oil of class B preferred stock of Panhandle Eastern, the acquisition by Columbia Oil of common stock of Panhandle Eastern in connection with the Detroit financing, and the March 17, 1936 contract,—all took place before June 1, 1936. Columbia Gas and Columbia Oil have spent many millions of dollars carrying out the transactions. Petitioner had full notice and knowledge of all these arrangements prior to their consummation. These details were set out in the offer of settlement made by Columbia Oil and Columbia Gas to Mokan and were accepted by Mokan after full hearing thereon in the court of Chancery of the State of Delaware. Obviously Mokan's application is not a timely one.

Clause (1) of subdivision (a) of Rule 24 is plainly inapplicable.

Clause (2) of subdivision (a) relates to cases in which the applicant for intervention has an interest in the action represented by a party so that the applicant may be bound by a judgment in the action. The question of adequacy of representation does not arise unless the applicant is represented in the action. Neither Mokan, as a substantial stockholder of Panhandle Eastern nor Panhandle Eastern, is [fol. 466] represented by *by* the United States. The interest of either of them will not be bound by a judgment on the supplemental complaint. The judgment of this court upon the issues tendered in the supplemental complaint will not bind Mokan or Panhandle Eastern. Such a judgment can not bind them with respect to the wholly different issues tendered by Mokan's proposed petition of intervention. Petitioner has no right to encumber the main action which is being conducted by the Attorney General with extraneous issues of a private nature. United States v. Radio Corporation, 3 F. Supp. 23, 25. United States v. Northern Securities Co., 128 Fed. 808, 813.

Clause 3 of subdivision (a) relates to cases in which the applicant will be adversely affected by a disposition of property in the custody of the court in which the applicant asserts an interest. This property consists of stock in Pan-

handle Eastern beneficially owned by Columbia Oil, and transferred to the voting trustee. In that stock neither Mokan nor Panhandle has any property right. Any disposition of that stock which would terminate control of Columbia Oil over Panhandle Eastern could not be regarded as adverse to either Panhandle Eastern or Mokan. On the contrary, Mokan seeks such disposition. Early in the English law a third person claiming an interest in property under the control of the court was permitted by interrogatories to establish his claim to or lien upon such property. This principle found expression in old Equity Rule 37. The new rule does not specifically set forth the nature of the interest in the property which a person must have [fol. 467] in order to establish his claim to intervention as a matter of right. It is improbable that the Supreme Court in promulgating this new rule intended to destroy well established principles as the basis of intervention as of right. It would produce chaos to require the courts to recognize the absolute right to intervention of strangers who had no legal or equitable interest in the subject matter of the action.

Clause 3 contemplates that the person having the right of intervention should have a legal interest in the property in the custody of the court. The res in this case is the Panhandle Eastern stock in the possession of Dunn. That stock is not being administered by the court. Dunn is not an administrative officer of the court. His duties as trustee merely contemplate the holding of Panhandle Eastern stock owned by Columbia Oil for the purpose of seeing that the provisions of the consent decree are carried out and that the affairs of Panhandle Eastern are free from the control and domination of Columbia Gas. Dunn is obliged to turn over to Columbia Oil all dividends except certain stock dividends. He must vote the stock in the manner directed by Columbia Oil. He is a mere watchman to see that the provisions of the consent decree are carried out. The stock of Panhandle Eastern is not "in the custody of the court or of an officer thereof" within the meaning of Rule 24(a).

Petitioner's final contention is that Rule 24(a) has broadened the well established principle to the extent of no longer requiring "any actual property interest in the res". [fol. 468] This position is without authority to sustain it.

Permissive Intervention

Permissive intervention is governed by subdivision (b) of Rule 24 of Rules of Civil Procedure:

"(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action; (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties".

Clause (1) has no application. Clause (2). The prayers of the proposed petition of intervention diverge sharply from the subject matter of the supplemental complaint. Affording petitioner relief would fundamentally alter and seriously complicate the character of this proceeding. The bare statement of the prayers sufficiently indicates how far they depart from the scope of the Government's complaint and how serious a delay would be involved in the determination of the questions raised thereby. The situation thus falls squarely within the last sentence of subdivision (b) which codifies prior equity practice.

"The intervenor was not entitled to come into the suit for the purpose of having adjudicated a controversy solely between it and plaintiff. Issues tendered by or arising out of plaintiff's bill may not by the intervenor be so enlarged. It is limited to the field of litigation open to the original parties * * *. Introduction by intervention of issues outside those that properly may arise between the original parties complicates the suit and is liable to impose upon plaintiff a burden having no relation to the field of the litigation opened by his bill". Chandler Co. v. Brandtjen, Inc., 296 U. S. 53, 57, 59.

[fol. 469] "It is apparent that, the right to become a party to the litigation being given, the range of activity of the newcomer in the prosecution or defense of the interest he is thus permitted to assert must necessarily be as extensive as, but no greater than, that allowed the original parties to the suit". Leaver v. K. & L. Box & Lumber Co., 6 F. (2d) 666.

Anti-Trust Suit

An individual may not participate in a suit brought under the Anti-Trust Laws by the Attorney General of the United States where the Attorney General does not consent to such intervention. In the present case the Attorney General affirmatively objects to the intervention. In its brief the government states that the United States opposes the motion of Mokan for leave to intervene "because (1) Mokan is not entitled to intervention of right, and (2) intervention by Mokan for the purposes set forth in its proposed petition would unduly complicate and delay the adjudication of the issues tendered by plaintiff's supplemental complaint". When the Anti-Trust laws are violated frequently there are private persons or corporations who feel themselves aggrieved.

Outside this suit Mokan can assert any claim for damages it may have against the defendants or for relief against Dunn for his alleged breaches of trust. Such a right has been recognized by this court.

"However the petitioner and other stockholders of Radio Corporation should not be deprived of their 'day in court'. The petitioner or any stockholder of Radio Corporation believing himself aggrieved by the action of General Electric or Westinghouse under or pursuant to the provisions of the consent decree may file a bill in this court seeking appropriate relief." United States v. Radio Corporation, 3 F. Supp. 23.

Mokan's motion for leave to intervene must be denied.

(Sgd.) John P. Nields, J.

March 29, 1939.

[fol. 470] In United States District Court

Order Denying Intervention by Missouri-Kansas Pipe Line Company—Filed March 30, 1939

And now, to-wit, this 30th day of March, A. D. 1939, the above entitled cause having come on to be heard upon the motion of Missouri-Kansas Pipe Line Company for leave to intervene in the above stated cause, and the said motion

having been fully argued by counsel, and upon consideration thereof by the Court, it is

Ordered by the Court that the said motion be and the same is hereby denied.

(Sgd.) John P. Nields, J.

[fol. 471] IN UNITED STATES DISTRICT COURT

ANSWER OF COLUMBIA GAS & ELECTRIC CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, THOMAS R. WEYMOUTH, THOMAS B. GREGORY AND EDWARD REYNOLDS, JR.—Filed May 15, 1939

And Now Come Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr., each being one of the defendants in the above-entitled cause, and answer the allegations of the Supplemental Complaint therein as follows:

First. They admit the allegations of paragraph 1 of Article I.

Second. They admit the allegations of paragraph 2 of Article I but pray leave to refer to the Decree of January 29, 1936 (hereinafter referred to as the Decree), for a more exact and fuller statement of the provisions thereof referred to in said paragraph 2.

Third. They admit the allegations of paragraph 3 of Article I, except that they deny that such allegations correctly state the full provisions of the Decree as to the persons from whom the directors of Panhandle Eastern must be selected, and said defendants allege that said Decree contains the following provisions limiting the persons, other than the Trustee himself, selected by Columbia Oil from whom such directors are to be chosen and voted for by the Trustee;

"Provided, that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recommended by the beneficial owner of said stock, in conference and with the advice of the trustee, [fol. 472] but not including any of the individual defendants herein or any one (except with the approval of the

trustee and this Court) who after January 1, 1931, has been or hereafter becomes an officer, director, agent or employee of Columbia Gas; and that, as to the directors so selected, the trustee is empowered to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree; subject, however, in this as well as in the exercise of all other powers to the authority of this Court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder";

and said defendants pray leave to refer to said Decree for a more exact and fuller statement of the provisions thereof referred to in said paragraph 3.

Fourth. They admit the allegations of paragraph 4 of Article I, except that they deny the allegation that the voting trust was set up as an interim device to effectuate the principal purpose of securing a position of free and independent action for Panhandle Eastern.

Fifth. They admit, on information and belief, the allegations of paragraph 1(a) of Article II except that (1) they deny knowledge or information sufficient to form a belief as to whether Mokan also owns a warrant entitling it to purchase an additional 80,000 shares of the common stock of Panhandle Eastern at $25 per share, and (2) they deny the allegation *the allegation* of the last sentence of said paragraph 1(a) that in the settlement agreement between Columbia Gas and Columbia Oil and the receivers of Mokan, Columbia Gas and Columbia Oil required said receivers to agree to distribute said warrant (or the stock represented thereby) pro rata among the stockholders of Mokan and [fol. 473] that Columbia Oil agreed to purchase from Panhandle Eastern any part of said warrant (or the shares represented thereby) not subscribed for by the stockholders of Mokan thereby increasing the proportionate holdings of Columbia Oil in the common stock of Panhandle Eastern, and said defendants pray leave to refer to said settlement agreement for a correct and full statement of the provisions thereof regarding the matters referred to.

Sixth. They admit, on information and belief, the allegations of paragraph 1(b) of Article II that New York United Corporation, a New York corporation, is a wholly-owned subsidiary of United Corporation, a Delaware corporation, and that either one of said two Corporations or both together own more of the common stock of Columbia Gas than any other stockholder of Columbia Gas, but they deny any knowledge or information sufficient to form a belief as to which of said Corporations is such owner, or, if both are owners, the respective proportions of such ownership; and defendants admit the remaining allegations of paragraph 1(b) of Article II except that (1) they deny the allegation that the entire funded debt of Columbia Oil, all of which is owned by Columbia Gas, amounts in face value to approximately $23,000,000, and allege that the same amounts to only $21,000,000 face amount, and (2) they deny the allegation that prior to the Decree all the voting trust certificates for the stock of Columbia Oil were held by the common stockholders of Columbia Gas and allege, on information and belief, that for a considerable period prior to the Decree certain of said voting trust certificates were held by common stockholders [fol. 474] of Columbia Gas and certain of said certificates were held by persons not stockholders of Columbia Gas, and (3) they deny the allegation that when the voting trust of the common stock of Columbia Oil was dissolved the common stock was distributed on a pro rata basis to the common stockholders of Columbia Gas and allege, on information and belief, that on the dissolution of said voting trust the common stock of Columbia Oil was distributed to the holders of the voting trust certificates issued by the voting trustees in amounts called for by the respective voting trust certificates, and (4) they deny the allegation that the common stockholders of Columbia Gas and the common stockholders of Columbia Oil have remained and now are substantially identical.

Seventh. They admit, on information and belief, the allegations of paragraph 2 of Article II.

Eighth. They admit the allegations of Article II, Section 3(a) of the complaint, that Columbia Gas has not disposed of all stock of any class having present or potential voting rights in Columbia Oil, and that Columbia Oil has not divested itself of ownership of all stock of Panhandle

Eastern, but they deny that such disposing or divesting is contemplated by the last paragraph of Section III or any other part of the decree except as therein stated, and they deny that at any time since the entry of the decree Columbia Gas has had any control of Panhandle Eastern.

Ninth. They admit the allegation of paragraph 3(b) of Article II that it is the expressly declared purpose of said [fol. 475] Decree to maintain Panhandle Eastern in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others, and admit the allegation of said paragraph 3(b) of of Article II that said Decree does not provide any particular method or procedure for Columbia Gas disposing of all stock of any class having present or potential voting rights in Columbia Oil or for Columbia Oil divesting itself of ownership of all stock of Panhandle Eastern, but they deny the remaining allegations of said paragraph 3(b) of Article II, and, without limiting the scope of this general denial, specifically deny the allegation that it is the declared purpose of said Decree to restore Panhandle Eastern to a position of free and independent action in the production, transmission, sale and distribution of Natural gas in competition with others, and state that such allegation is an incorrect statement and that there is no such purpose declared in the Decree.

For a First Separate Affirmative Defense Said Defendants Allege That:

Tenth. Said decree by its terms permits Columbia Gas to retain, without restriction as to time, all stock of Columbia Oil owned by it of any class, whether or not having present or potential voting rights, and also permits Columbia Oil to retain, without restriction as to time, all stock of Panhandle Eastern owned by it, without being either itself required to dispose of it or to permit the trustee appointed under the Decree to dispose of it. In reliance on the Decree, Columbia Gas has taken all action on its part required by the stipulation attached to the Decree, to which [fol. 476] reference is hereby made as if the same were set forth at length herein, and has advanced or paid to Columbia Oil large sums of money and other consideration to permit Columbia Oil to retain and acquire its present stockholdings of Panhandle Eastern, and has built, at the cost to

Columbia Gas of many millions of dollars, a pipe line connecting the line of the Panhandle Eastern with the City of Detroit, whereby natural gas has been brought to and is being served in Detroit, all in accordance with or as permitted by the provisions of the Decree and with the full knowledge of the Government, and the Government is consequently now estopped from seeking a modification of the Decree and from seeking to require either Columbia Gas to divest itself of any stock of Columbia Oil having voting rights or to require Columbia Oil to dispose of the stock of Panhandle Eastern owned by it or to submit to a disposition thereof by the trustee, and from seeking any other of the so-called relief prayed for by it in its complaint.

Wherefore these defendants pray that said supplemental complaint be dismissed and that they may go hence without delay and recover their costs herein, and for such other and proper relief as is equitable.

(Sgd.) Clarence A. Southerland, Solicitor for Defendants Columbia Gas & Electric Corporation, George H. Howard, Phillip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr.; Douglas M. Moffat, of Counsel.

May 15, 1939.

[fol. 477] IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANTS COLUMBIA OIL & GASOLINE CORPORATION AND CHARLES A. MUNROE TO SUPPLEMENTAL COMPLAINT—Filed May 15, 1939

And Now Comes Columbia Oil & Gasoline Corporation (hereinafter sometimes referred to as "Columbia Oil") and Charles A. Munroe, two of the defendants in the above-named cause, and for their answer to the allegations contained in the supplemental complaint of the plaintiff therein, allege as follows:

1. They admit the allegations contained in paragraph 1 of Article I of the supplemental complaint to the extent that the defendant Columbia Gas, Panhandle Eastern and the defendant Columbia Oil were described in Section I of the decree entered herein on January 29, 1936, substantially as set forth in said paragraph 1 of Article I of the sup-

plemental complaint, except that they deny that the description in said Section I of said decree speaks as of the date of the supplemental complaint or as of any date other than the date of said decree. These defendants pray leave to refer to said decree for the complete and correct provisions thereof on the trial of this case.

2. They admit the allegations contained in paragraph 2 of Article I of the supplemental complaint, except that they deny that said allegations completely set forth or summarize the restrictions and prohibitions, and exceptions thereto, [fol. 478] imposed by said decree of January 29, 1936, upon Columbia Gas, Columbia Oil and the other defendants herein. These defendants pray leave to refer to said decree for the complete and correct provisions thereof on the trial of this case.

3. They admit the allegations contained in the first two sentences and subdivisions (b) and (d) of the third sentence of paragraph 3 of Article I of the supplemental complaint, but they deny that the allegations contained in subdivision (a) of the third sentence of said paragraph 3 correctly or completely set forth or summarize the provisions contained in Section III of said decree of January 29, 1936, limiting the persons to be recommended by the defendant Columbia Oil from whom the directors of Panhandle Eastern to be elected by the Trustee are to be selected and providing for the removal and replacement by the Trustee of the directors so selected with others of his own choosing, and they deny that the allegations contained in subdivision (c) of the third sentence of said paragraph 3 correctly or completely set forth or summarize the provisions contained in Section III of said decree, as amended by the decree entered June 19, 1936, relating to the compensation to be paid to the Trustee and the reimbursement of expenditures incurred and to be incurred by him. These defendants pray leave to refer to said decree and said amended decree for the complete and correct provisions thereof on the trial of this case.

[fol. 479] 4. They admit the allegations contained in subdivision (a) of paragraph 4 of Article I of the supplemental complaint and the substantial correctness of the language of said decree of January 29, 1936, as quoted in subdivision (b) of said paragraph 4, but they der the remaining allegations contained in subdivision (b) of said

paragraph 4. These defendants pray leave to refer to said decree for the complete and correct provisions thereof on the trial of this case.

5. They admit the allegations contained in paragraph 1 (a) of Article II of the supplemental complaint that Columbia Oil now is the beneficial owner of 404,326 shares of common stock of Panhandle Eastern representing a majority of the 728,652 shares issued and outstanding, $10,000,000 par value of Class A preferred stock of Panhandle Eastern and $1,000,000 par value, being the entire issue, of Class B preferred stock of Panhandle Eastern, that the Class B preferred stock is non-callable and entitled the holders thereof (as a class) to elect two directors to the board of directors of Panhandle Eastern, that the common stock and Class B preferred stock beneficially owned by Columbia Oil elect six of the nine directors of Panhandle Eastern, and that out of said six directors one must be the voting trustee, but they allege that pursuant to the provisions of Section III of the decree entered herein on January 29, 1936, the voting trustee has held and now holds the legal title to and has been and is the owner of record of the aforementioned shares of common and pre- [fol. 480] ferred stock of Panhandle Eastern beneficially owned by Columbia Oil, and has, since the entry of said decree, voted said stock for the election of directors and upon all other questions and matters in which the stock is entitled to be voted, pursuant to and subject to the directions and limitations contained in said decree to which these defendants pray leave to refer for the complete and correct provisions thereof on the trial of this case; and they admit that the remaining 324,326 shares of the outstanding common stock of Panhandle Eastern were acquired by Mokan under the terms of a settlement agreement provided for in Section V of the stipulation filed in connection with said decree of January 29, 1936, made and entered into by and between Columbia Gas and Columbia Oil on the one hand and the Receivers of Mokan appointed by the Chancery Court of the State of Delaware on the other, and approved by said Court on the 29th day of April, 1936; but they deny knowledge or information sufficient to form a belief as to whether said 324,326 shares of stock of Panhandle Eastern are held by Mokan or as to whether Mokan also owns a warrant entitling it to purchase an additional

80,000 shares of the common stock of Panhandle Eastern at $25 per share; and they deny the remaining allegations contained in said paragraph 1 (a) except that they allege that in the said settlement agreement between Columbia Gas and Columbia Oil and the Receivers of Mokan, Columbia Oil agreed to purchase from Panhandle Eastern said additional 80,000 shares of the common stock of Panhandle Eastern at $25 per share to the extent that the stockholders of Mokan should not exercise their rights to [fol. 481] subscribe to said shares, subject to the right of Mokan or any new corporation taking over its assets under any plan of reorganization or readjustment or reclassification of its stock to repurchase the same at $25 per share, plus interest at the rate of 6% per annum, during a certain prescribed period. These defendants pray leave to refer to said settlement agreement for the complete and correct provisions thereof on the trial of this case.

6. They admit the allegations contained in the first, second and seventh sentences of paragraph 1 (b) of Article II of the supplemental complaint that Columbia Gas owns 400,000 shares, being the entire amount issued and outstanding, of preferred stock of Columbia Oil, that such stock, as long as owned by Columbia Gas, carries with it the right to elect a minority of the board of directors of Columbia Oil, and that in the election of directors of Columbia Oil the common stockholders of Columbia Oil enjoy the right of cumulative voting; but they deny that they have any knowledge or information sufficient to form a belief as to the allegations in said paragraph 1 (b) that New York United Corporation is a New York corporation, is a wholly owned subsidiary of United Corporation, a Delaware corporation, is the largest single common stockholder of Columbia Gas, or owns approximately 20% of the outstanding voting securities of Columbia Gas; and they admit the remaining allegations of said paragraph 1 (b) except that (1) they deny the allegation that the entire funded debt of Columbia Oil, owned by Columbia Gas, is in a total face amount of approximately $23,000,000, and (2) they deny the allegation that prior to the entry of the decree of January 29, 1936, all voting trust certifi- [fol. 482] cates for common stock of Columbia Oil were held by the holders of the common stock of Columbia Gas, and (3) they deny the allegation that on the dissolution of the

voting trust the common stock of Columbia Oil was distributed, on a pro rata basis, to the common stockholders of Columbia Gas, and (4) they deny the allegation that the common stockholders of Columbia Gas and the common stockholders of Columbia Oil have remained and now are substantially identical.

7. They admit the allegations contained in paragraph 2 of Article II of the supplemental complaint.

8. They admit the allegations contained in paragraph 3 (a) of Article II of the supplemental complaint that Columbia Gas has not disposed of all stock of any class having present or potential voting rights in Columbia Oil and that Columbia Oil has not divested itself of ownership of all stock of Panhandle Eastern, but (1) they deny that such disposing or divesting is contemplated by the last paragraph of Section III or by any other provision of said decree, and (2) they deny that Columbia Gas at any time since the entry of the decree has had or now has any control of Panhandle Eastern.

9. They admit the allegations of paragraph 3 (b) of Article II of the supplemental complaint that the decree of January 29, 1936, expressly declares that the maintenance of Panhandle Eastern in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others con-
[fol. 483] stitutes the proper basis for the entry of said decree, and that the decree does not provide for any particular method or procedure for Columbia Gas disposing of all stock of any class having present or potential voting rights in Columbia Oil, or for Columbia Oil divesting itself of ownership of all stock of Panhandle Eastern but they deny all the remaining allegations of said paragraph 3 (b).

For a First Separate Affirmative Defense These Defendants Allege That:

10. The defendant Columbia Gas has not, through these defendants, or either of them, or, on information and belief in any other manner, directly or indirectly, dominated or controlled, or attempted to dominate or control, the affairs of Panhandle Eastern. From the time when the defendant Columbia Oil issued to defendant Columbia Gas 400,000 shares of its new Non-Cumulative Participating

Preferred Stock in exchange for Columbia Oil's previously outstanding shares of preferred stock held by defendant Columbia Gas, the voting trust for Columbia Oil's common stock was dissolved and the other details provided for in Section IV of the stipulation, on which the decree of January 29, 1936 was entered, were carried into effect, all of which details were consummated shortly after the entry of said decree, the defendant Columbia Gas has not exercised and in fact has not been in a position to exercise, any domination or control over the affairs of Columbia Oil or, through Columbia Oil or on information and belief in any other manner, over the affairs of Panhandle Eastern. Neither have these defendants nor on information and [fol. 484] belief the defendant Columbia Gas or any of the other defendants herein, interfered or attempted to interfere in any way with the maintenance of said Panhandle Eastern in a position of free and independent action in the production, transmission, sale or distribution of natural gas in competition with others. These defendants and on information and belief the defendant Columbia Gas and the other defendants herein, have at all times obeyed each and every restriction and prohibition of said decree of January 29, 1936, and of the amended decree of June 19, 1936, and have complied with each and every provision of said decrees and of the stipulations on which said decrees were entered, which stipulations and decrees are hereby referred to and incorporated herein by reference to the same effect as if herein set forth at length.

For a Second Separate Affirmative Defense These Defendants Allege That:

11. The decree entered herein on January 29, 1936 and the stipulation between the parties, dated January 29, 1936, on which said decree was entered, constitute a final compromise and settlement of this controversy as between the plaintiff and the defendants, and these defendants, and on information and belief the defendant Columbia Gas and the other defendants herein, have fully complied with all the terms and provisions of said stipulation and decree, as well as the amended decree of June 19, 1936, and of the stipulation on which said amended decree was entered, as hereinabove alleged in paragraph 10 hereof. No change of condi- [fol. 485] tions has taken place since the entry of said

decree or of said amended decree and no circumstances have existed, now exist or threaten to exist which would warrant said decree and/or amended decree to be modified or supplemented.

For a Third Separate Affirmative Defense These Defendants Allege That:

12. In reliance upon the provisions of the decree of January 29, 1936, and of the provisions of the stipulation between the parties, dated January 29, 1936, on which said decree was entered, the defendant Columbia Oil has incurred substantial obligations and expended large sums of money in the retention and acquisition of the securities of the Panhandle Eastern, all as permitted and contemplated by the provisions of said stipulation and decree, and, therefore, the plaintiff is estopped from now seeking to modify said decree or to have said decree supplemented in the manner requested in the supplemental complaint or in any other manner whatsoever.

Wherefore, these defendants pray that said supplemental complaint be dismissed, and that they may go hence without delay and recover their costs herein, and for such other and proper relief as is equitable.

(Sgd.) Daniel O. Hastings, Solicitor for Defendants Columbia Oil & Gasoline Corporation and Charles A. Munroe. Of Counsel: William H. Button, 27 Cedar Street, New York, N. Y. Auchincloss, Alley & Duncan, 50 Broadway, New York, N. Y.

Dated, May 15th, 1939.

[fol. 486] In United States District Court

Motion for Abandonment of Supplemental Complaint—Filed May 15, 1939

The United States of America, plaintiff in the above-entitled action, by John J. Morris, Jr., United States Attorney for the District of Delaware, acting under the direction of the Attorney General, moves this Court to enter an order directing that the Supplemental Complaint filed by the plain-

tiff in this action on December 21, 1938 shall be abandoned.

This motion is made upon the ground that plaintiff has on this day moved this Court to vacate the Consent Decree entered in this action on January 29, 1936, and to permit plaintiff to file and serve an Amended and Supplemental Complaint which will replace said Supplemental Complaint of December 21, 1938.

Dated May 15, 1939.

(Sgd.) John J. Morris, Jr., U. S. Attorney for the District of Delaware. Address: U. S. Post Office Building, Wilmington, Delaware. (Sgd.) Morris R. Clark, Special Assistant to the Attorney General. (Sgd.) Milton Katz, Special Assistant to the Attorney General. (Sgd.) John S. L. Yost, Special Assi-tant to the Attorney General.

[fol. 487] IN UNITED STATES DISTRICT COURT

MOTION BY UNITED STATES OF AMERICA TO VACATE DECREE OF JANUARY 29, 1936—Filed May 15, 1939

The United States of America, plaintiff in the above-entitled action, by John J. Morris, Jr., United States Attorney for the District of Delaware, acting under the direction of the Attorney General, moves this Court:

(1) To vacate the decree entered in this action on January 29, 1936; (2) to permit the plaintiff to serve and file the Amended and Supplemental Complaint annexed hereto; (3) to enter an order requiring that the relationships among the defendants herein, the trustee appointed pursuant to Section III of said decree and Panhandle Eastern Pipe Line Company be maintained in statu quo pending adjudication of the issues tendered by the Amended and Supplemental Complaint annexed hereto; and (4) to order the defendants to answer or otherwise plead to the Amended and Supplemental Complaint annexed hereto within twenty days after a copy thereof shall have been duly served.

This motion is based upon all the pleadings, records and other documents on file and upon all proceedings heretofore had in this action, and is made upon the grounds more particularly set forth in paragraphs 3-7, inclusive, of said

[fol. 488] Amended and Supplemental Complaint hereto annexed.

Dated May 15th, 1939.

(Sgd.) John J. Morris, Jr., U. S. Attorney for the District of Delaware. Address: U. S. Post Office Building, Wilmington, Delaware. (Sgd.) Milton Katz, Special Assistant to the Attorney General. (Sgd.) John S. L. Yost, Special Assistant to the Attorney General. (Sgd.) Morris R. Clark, Special Assistant to the Attorney General. (Sgd.) Frank Murphy, Attorney General. (Sgd.) Thurman Arnold, Assistant Attorney General. (Sgd.) Wendell Berge, Special Assistant to the Attorney General.

[fol. 489] AMENDED AND SUPPLEMENTAL COMPLAINT

(Annexed to Motion to Vacate Decree)

The United States of America, plaintiff in the above-entitled action, by John J. Morris, Jr., United States Attorney for the District of Delaware, acting under the direction of the Attorney General, files this Amended and Supplemental Complaint. Plaintiff makes the following allegations upon information and belief.

I

1. Plaintiff re-alleges paragraphs Nos. 1-32, inclusive, together with the Exhibits thereto, of the Amended and Supplemental Petition filed in this action on October 30, 1935, which are incorporated herein as a part hereof, with the following modifications:

(a) Paragraph No. 14 of said Amended and Supplemental Petition is amended to read as follows:

"14. That Columbia Oil & Gasoline Corporation is a corporation of the State of Delaware, organized by Columbia Gas & Electric Corporation to hold the oil, gasoline and gas-producing properties of the Columbia System. Up to January 29, 1936, all of its first preferred stock and all of its second preferred stock was owned by Columbia Gas & Electric Corporation, and all of its common stock was deposited in a voting trust, against which voting trust certificates had

[fol. 490] been issued and were held by the holders of the common stock of Columbia Gas & Electric Corporation."

(b) Paragraph No. 17 of said Amended and Supplemental Petition is amended to read as follows:

"17. That since early in June, 1930, the defendants have made contracts and have been and now are engaged in a combination and conspiracy to restrain trade and commerce in natural gas among the States of Kansas, Missouri, Illinois, Indiana, Michigan and Ohio, and have been and now are engaged in monopolizing, attempting to monopolize, and combining and conspiring to monopolize trade and commerce in natural gas in the States of Indiana, Michigan and Ohio, in violation of the Act of Congress approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies'.

"To that end, the defendants sought to prevent the construction of the natural gas pipe line described in paragraph 16 hereof. Failing that, they set out to obtain and did obtain control of the management and operation of said Panhandle Eastern Pipe Line Company and its subsidiaries. Having obtained such control, they set out to conduct and did conduct its activities and affairs so as to (a) prevent said Missouri-Kansas Pipe Line Company from obtaining its requirements of natural gas from said Panhandle Eastern Pipe Line Company, and (b) prevent said Panhandle Eastern Pipe Line Company from making available, either [fol. 491] directly or indirectly, its large supplies of natural gas in such manner as to compete with the Columbia System or endanger its actual or contemplated monopoly in the distribution and sale of natural gas in said States of Indiana, Michigan and Ohio. The defendants also sought to acquire ownership of the physical property of Panhandle Eastern, through bringing about a foreclosure of the mortgage securing the bonded indebtedness of Panhandle Eastern, or otherwise, as hereinafter more particularly described.

"The defendants herein have carried out or attempted to carry out these purposes in the manner and by the means hereinafter set forth."

(c) Paragraph No. 21 of said Amended and Supplemental Petition is amended by striking the last sentence thereof and substituting therefor the following:

"The defendants Gossler and Munroe induced Mokan to accept the defendant Howard as such third voting trustee and ninth director by representing that said Howard would act impartially and in the best interests of Panhandle Eastern Pipe Line Company. But the selection of said George H. Howard as the third voting trustee and the ninth director of Panhandle Eastern Pipe Line Company, in fact constituted an act in furtherance of said combination and conspiracy, inasmuch as (a) at the time of such selection, said George H. Howard was president of United Corporation, which was and is the largest single stockholder in the defendant Columbia Gas & Electric Corporation, (b) within two weeks [fol. 492] after such selection, the said George H. Howard became a director of both the defendant Columbia Gas & Electric Corporation and the defendant Columbia Oil & Gasoline Corporation, and (c) during the period in which said George H. Howard served as such voting trustee and director, he acted in the interests of Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation and assisted in effecting the purposes of said combination and conspiracy."

(d) Paragraph No. 23 of said Amended and Supplemental Petition is amended to read as follows:

"23. As soon as the new Board of Directors of Panhandle Eastern Pipe Line Company had been elected pursuant to the provisions of said agreement of September 30, 1930, the individual defendants P. G. Gossler, George H. Howard, and C. A. Munroe, who, together with Fred W. Crawford and George W. Crawford, both of whom are now deceased, constituted a majority of said Board, caused the election of new officers to manage and operate the affairs of said Panhandle Eastern Pipe Line Company. None of these new officers, with the exception of the defendant Burt R. Bay, had previously been identified either with Mokan or with Panhandle Eastern Pipe Line Company, and all of them (including said defendant Burt R. Bay up to the date of his resignation as an officer of Panhandle Eastern Pipe Line Company on the 31st day of July, 1938) have been and are responsive to the wishes of the other defendants herein in the management of the operations and [fol. 493] affairs of said Panhandle Eastern Pipe Line Company."

(e) Paragraph No. 26 of said Amended and Supplemental Petition is amended as follows:

By inserting, after the word "receivers", which appears in said paragraph in the next to the last line on page 20 of said Amended and Supplemental Petition, the following:

"appointed by the Court of Chancery of the State of Delaware, as more particularly described in the next succeeding paragraph,".

(f) Paragraph No. 27 of said Amended and Supplemental Petition is amended to read as follows:

"27. That by reason of its inability to purchase gas for resale from Panhandle Eastern Pipe Line Company, and because of the heavy obligations assumed in raising its share of the funds necessary to complete said Panhandle Eastern Pipe Line, Mokan became financially embarrassed, and in March 1932, receivers of its property and assets were appointed by the Court of Chancery of the State of Delaware in and for New Castle County. By reason of said receivership, the defendant J. H. Hillman, Jr. became entitled to nominate and did nominate the four directors of Panhandle Eastern Pipe Line Company allotted to Mokan by said agreement of September 30, 1930, and said Hillman and the three individuals nominated by him acted as directors of Panhandle Eastern Pipe Line Company continuously from the date of appointment of said receivers through the month [fol. 494] of January, 1936. As a result of a default in payment of said Mokan collateral trust notes, described in paragraph 24 hereof, the said Hillman and his associates, in February, 1933, became the owners of 750 of the 1000 outstanding shares of Panhandle Corporation, which corporation owned one-half of the outstanding capital stock of Panhandle Eastern Pipe Line Company, and through his resulting domination of Panhandle Corporation, the defendant Hillman was in a position to assist and did assist in carrying out the objects and purposes of said combination and conspiracy. From the time when said Hillman and his nominees became members of the Board of Directors of Panhandle Eastern Pipe Line Company through the month of January, 1936, they acted in concert with the other individual defendants in so conducting the affairs of Panhandle Eastern Pipe Line Company as to carry out the purposes and objects of said combination and conspiracy."

(g) The last sentence of paragraph No. 30 of said Amended and Supplemental Petition is amended to read as follows:

"Said 'Offer' and 'Plan' were not dependent upon the consent or approval of said Chancery Court of Delaware, and if carried out would have resulted in ownership by the defendant Columbia Oil & Gasoline Corporation of the entire funded debt of Panhandle Corporation then in default and guaranteed by Mokan, as well as ownership of three-fourths of the outstanding capital stock of said Panhandle Corporation, which company, in turn, owned the 50% inter-[fol. 495] est in Panhandle Eastern Pipe Line Company originally owned by Mokan."

(h) Paragraph No. 32 of said Amended and Supplemental Petition is amended by striking the words "in furtherance of said combination and conspiracy" which appear in the second line thereof.

2. On January 29, 1936, pursuant to a stipulation entered into between the plaintiff and the defendants, a consent decree was entered in this action.

3. The expressly declared purpose of said consent decree was to restore Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle Eastern") to, and to maintain it in, a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others. More particularly, said decree was designed to terminate and thereafter prevent "domination or control, direct or indirect, in the affairs of Panhandle Eastern Pipe Line Company by the defendant Columbia Gas & Electric Corporation". The course of events since the entry of said decree has, however, made it increasingly clear that said decree has been and is ineffectual toward the accomplishment of this explicit purpose, as hereinafter more particularly set forth.

4. The chief device upon which said decree relied to nullify the control exercised over Panhandle Eastern by the defendant Columbia Gas & Electric Corporation (hereinafter referred to as "Columbia Gas"), and to restore Panhandle Eastern to a position of free and independent [fol. 496] competitive action in the production, transmission, sale and distribution of natural gas, was the voting

trust established pursuant to Section III of said decree. By said Section III, it was provided that within ten days following the entry of the decree, the defendant Columbia Oil & Gasoline Corporation (hereinafter referred to as "Columbia Oil") should transfer to Gano Dunn, as voting trustee, all stock carrying present or potential voting rights then owned by Columbia Oil in Panhandle Eastern, and that any stock of Panhandle Eastern which might thereafter be acquired by Columbia Oil should likewise be promptly transferred to said trustee. The transfer of such stock was effected early in February, 1936, shortly after the entry of said decree. Gano Dunn, as trustee, has held all stock of Panhandle Eastern beneficially owned by Columbia Oil continuously since that date and now holds it, upon the following terms and conditions:

(a) It is his duty to vote such stock for the election of as many directors of Panhandle Eastern as such stock may be entitled to elect. One of the directors thus elected must be the trustee himself. The remainder must be selected from among persons recommended by Columbia Oil.

(b) It is his duty to vote such stock upon all other questions and matters in respect of which such stock is entitled to vote, as directed by Columbia Oil, except insofar as such directions may be inconsistent with the purposes of said decree.

(c) He receives compensation in the amount of $22,500 per annum, paid in equal parts by Columbia Gas and Columbia Oil.

[fol. 497] (d) He likewise exercises certain other powers and is subject to certain other duties supplementary to those described above, as more fully described in said Section III of said decree.

5. The limitations imposed upon said trustee by the provisions summarized in sub-paragraphs (a) and (b) of paragraph No. 4 hereof have made it impossible for the voting trust to serve, in accordance with the purpose of said decree, as an effective insulator against the control theretofore exercised by Columbia Gas, through Columbia Oil, over Panhandle Eastern. In his effort to discharge his duties under these limitations, the trustee has from time to time sought the assistance and advice of various officials

of the Department of Justice. The inadequacy of said decree to prevent control of Panhandle Eastern by Columbia Gas has, moreover, resulted in frequent controversies among persons or groups financially interested in Panhandle Eastern as to whether the operations of Panhandle Eastern were being conducted in a manner consistent with the free and independent competitive status for Panhandle Eastern contemplated by said decree; and often, in these controversies, one or another of the persons or groups involved has likewise sought the advice and assistance of officials of the Department of Justice. These officials have endeavored to give such advice and assistance, only to find that a conscientious effort to counteract the control exercised over Panhandle Eastern by Columbia Gas within the framework of said decree would have involved them progressively deeper in supervision over the ordinary, day-to-day managerial decisions of the directors and officers of [fol. 498] Panhandle Eastern. These officials naturally could not give supervision of this sort, and such advice and assistance as they were able to give, being necessarily based upon a limited inquiry into the relevant facts and circumstances, was not sufficient to restore and maintain Panhandle Eastern to the position of free and independent action intended by said decree.

6. Not only has said consent decree failed to nullify those elements of control over Panhandle Eastern by Columbia Gas which existed at the time of entry thereof, but Columbia Gas has actually strengthened its position of control since that date, as follows:

(a) On August 31, 1935, after the commencement of this action and prior to the entry of said decree, Panhandle Eastern had entered into an agreement (hereinafter referred to as the "Detroit contract") with Detroit City Gas Company (which has since become Michigan Consolidated Gas Company, and which sells gas at retail in the City of Detroit, Michigan), by the terms of which Panhandle Eastern agreed for a period of fifteen years to supply natural gas to Detroit City Gas Company for re-sale within the metropolitan area of Detroit. At the time when said Detroit contract was made, as well as at the time when said decree was entered, the eastern terminus of Panhandle Eastern's natural gas pipe line was at a point called Dana, in the State of Indiana, situated near the Illinois-Indiana

state boundary line, more than three hundred miles from Detroit. At that time, there was no pipe line connection [fol. 499] between this eastern terminus of Panhandle Eastern's pipe line and Detroit. A copy of said Detroit contract was filed in this Court by said trustee, in connection with his report covering his activities as such trustee for the six months' period from January 29, 1936, to July 29, 1936.

Said Detroit contract provided, among other things, that Panhandle Eastern would construct a pipe line extension from the eastern terminus of its then existing pipe line at Dana, Indiana, to the City of Detroit (hereinafter referred to as the "Detroit Extension"), and that Panhandle Eastern would reinforce its then existing pipe line. It contemplated that Panhandle Eastern would arrange for the financing of such construction and reinforcement, if it should be unable to undertake the financing thereof itself. Among other provisions, said contract contained the following:

"Inasmuch as the carrying out of this Agreement depends upon the construction of a pipe line connecting the eastern terminus of Seller's existing pipe line at the Illinois-Indiana state line with the City of Detroit, as well as on the reinforcement of the present pipe line of Seller, since the present line of Seller is inadequate to deliver the quantity of gas called for by this Agreement without reinforcements requiring the expenditure of a large sum of money, and Seller represents that its financial position is such that it cannot construct either said connecting line or said reinforcements without outside financing, it is expressly understood and agreed that, unless the construction of such connecting line shall have been financed on or before February 1, 1936, and unless a contract shall be entered into providing for the financing of said reinforcement of Seller's present pipe line before said date, this Agreement shall be null and void and no obligations hereunder shall exist on the part of either party hereto. Seller agrees to use its best efforts to arrange for financing the construction of such connecting pipe line and such reinforcement of its present pipe line, but does not undertake any firm commitment to do so. If such financing shall be arranged by said [fol. 500] date, Seller will construct and place said connecting pipe line in condition for operation on or before the Date of Initial Delivery."

On January 31, 1936, almost immediately after the entry of said consent decree, the defendants herein caused Panhandle Eastern to enter into a contract with Columbia Gas and Columbia Oil, by which it was provided that Columbia Gas or Columbia Oil, through subsidiaries thereof, would build, own and operate said Detroit Extension, instead of Panhandle Eastern. A copy of said contract is attached hereto, as Exhibit I, and is made a part hereof. Such action was taken by the Board of Directors of Panhandle Eastern at the instance of Columbia Gas and Columbia Oil. Shortly before this, in contemplation of said contract, Columbia Gas caused to be organized a new company, named Michigan Gas Transmission Company, the entire capital stock of which was and now is owned by Columbia Gas. Columbia Gas thereupon advanced to said Michigan Gas Transmission Company the funds necessary for the construction of said Detroit Extension. Such construction was completed in the summer of 1936, and said Detroit Extension has ever since been and is now owned and operated by Michigan Gas Transmission Company. Michigan Gas Transmission Company has received and is now receiving large benefits and profits from said Extension, which it, in turn, pays to Columbia Gas in the form of dividends upon its stock.

In thus acquiring control over the physical means of access by Panhandle Eastern to the Detroit market, Columbia Gas increased its control over Panhandle Eastern. In addition, Columbia Gas exercised its control to prevent [fol. 501] Panhandle Eastern from serving markets in Indiana, Ohio and southeastern Michigan, which could have been readily served by Panhandle Eastern through the Detroit Extension. This restraint, and its consequences, are exemplified by the situation of the City of Toledo, Ohio. Toledo is not more than eight miles east of the Detroit Extension. At present, the gas needs of Toledo are served by Columbia Gas or one or more subsidiaries thereof, at a gate-rate of approximately 55¢ per thousand cubic feet of natural gas. At the same time, the City of Detroit is being served with natural gas supplied by Panhandle Eastern and delivered through the Detroit Extension at the rate of about 34¢ per thousand cubic feet. Columbia Gas, however, has exercised its control over Panhandle Eastern and over the Detroit Extension to prevent the logical and practicable step of building an eight mile branch pipe line

from the Detroit Extension to Toledo, and has prevented Panhandle Eastern from selling natural gas in the Toledo market in competition with itself and its subsidiaries.

(b) On January 31, 1936, almost immediately after the entry of said decree, the defendants exercised their control over Panhandle Eastern to bring about a reorganization thereof, pursuant to which:

(1) The common stock of Panhandle Eastern was increased to 808,652 shares, of which 404,326 shares were issued to Columbia Oil;

(2) A new Class "A" preferred stock, of $10,000,000 par value, was created and issued to Columbia Oil; and

(3) A new Class "B" preferred stock, of $1,000,000 par value, was created and issued to Columbia Oil. This Class [fol. 502] "B" preferred stock is non-callable, and entitles the holders thereof, as a class, to elect two directors to the Board of Directors of Panhandle Eastern.

As a result of such reorganization, Columbia Oil now beneficially owns 404,326 shares of the common stock of Panhandle Eastern, representing a majority of the 728,652 shares outstanding, and all of both classes of preferred stock of Panhandle Eastern. The common stock and the Class "B" preferred stock thus beneficially owned by Columbia Oil are entitled to elect six of the nine directors of Panhandle Eastern. Although this stock is voted by the trustee in accordance with the terms of the voting trust set up pursuant to Section III of said decree, and although one of the directors elected by such stock must be such trustee, the remaining five directors, being a majority of the board, have been selected from among persons recommended by Columbia Oil. Thus, ever since such reorganization, a majority of the Board of Directors of Panhandle Eastern have represented and now represent Columbia Oil and Columbia Gas.

The remaining 324,326 shares of the outstanding common stock of Panhandle Eastern are held by Missouri-Kansas Pipe Line Company, hereinafter referred to as "Mokan", a Delaware corporation. These 324,326 shares were acquired by Mokan under the terms of a settlement agreement, entered into pursuant to Section V of the stipulation filed in connection with said decree of January 29, 1936, between Columbia Gas and Columbia Oil on the one hand

and the receivers of Mokan appointed by the Chancery Court of the State of Delaware on the other, and approved by said Chancery Court on the 29th day of April, 1936. [fol. 503] Under such settlement agreement, Mokan also acquired a warrant entitling it to purchase an additional 80,000 shares of the common stock of Panhandle Eastern at $25.00 per share. In said settlement agreement, it was provided that said warrant (or the stock represented thereby) would be distributed pro rata among the stockholders of Mokan, and Columbia Oil agreed to purchase from Panhandle Eastern any part of said warrant (or the shares represented thereby) not subscribed for by the stockholders of Mokan. Any such purchase would increase the proportionate holdings of Columbia Oil in the common stock of Panhandle Eastern.

In addition, the defendants have exercised their control to continue as officers of Panhandle Eastern, and to cause to be made officers of Panhandle Eastern, certain individuals previously employed by Columbia Gas or by a subsidiary thereof, or otherwise friendly to Columbia Gas and Columbia Oil, who, in the conduct of the affairs of Panhandle Eastern, have been willing to take and have taken orders from various of the defendants, and have been and are responsive to the general business and managerial policy of Columbia Gas and Columbia Oil. Among the officers thus continued in office was the defendant Burt R. Bay, who had been president and a director of Panhandle Eastern and was continued in office as vice-president and general manager up to the date of his resignation from said offices on the 31st day of July, 1938. Among the officers placed in high executive positions in Panhandle Eastern as aforesaid is Joseph D. Creveling, who, since June 15, 1936, has been and is now president of Panhandle Eastern.

[fol. 504] (c) Almost immediately after the entry of said decree, the defendants brought about a reorganization of Columbia Oil, pursuant to which:

(1) The voting trust for the common stock of Columbia Oil described in sub-paragraph (a) of paragraph No. 1 hereof, was dissolved, and the common stock of Columbia Oil was distributed on a pro rata basis to the common stockholders of Columbia Gas;

(2) A new class of participating preferred stock, numbering 400,000 shares, was created, and issued in its entirety to Columbia Gas, which has ever since owned and held, and now owns and holds the same, and

(3) Provision was made for a new issue of $30,000,000 par value of debentures, of which debentures in the amount of $23,000,000 (the entire amount now outstanding) were issued to Columbia Gas, which has ever since owned and held and now owns and holds the same. The new participating preferred stock thus created, as long as owned by Columbia Gas, carries with it the right to elect the largest number of directors constituting a minority of the Board of Directors of Columbia Oil. The common stock of Columbia Oil (distributed ratably among the common stockholders of Columbia Gas, as aforesaid) is entitled to elect the smallest number of directors constituting a majority of the Board of Directors of Columbia Oil. The common stockholders enjoy the right of cumulative voting.

The two largest common stockholders of Columbia Oil are the United Corporation, a Delaware corporation, and the defendant Philip G. Gossler, who at all times mentioned [fol. 505] herein has been an officer and director of Columbia Gas, and who now is Chairman of the Board of Directors thereof. Philip G. Gossler had likewise been a director of United Corporation, but had resigned shortly before the commencement of this action. New York United Corporation, a New York corporation, which is a wholly owned subsidiary of United Corporation, is the largest stockholder of Columbia Gas, owning approximately 20% of the outstanding voting securities of Columbia Gas. The defendant George H. Howard is president of United Corporation; he was formerly a director of Columbia Gas and of Columbia Oil, but resigned shortly prior to the institution of this action.

In addition, defendant Charles A. Munroe is president and a director of Columbia Oil, and until the year 1935 was an officer and director of Columbia Gas. Defendant Edward Reynolds, Jr. is president and a director of Columbia Gas and is also a director of Columbia Oil. Walter C. Beckjord is Chairman of the Executive Committee, Executive Vice-President and General Manager of Columbia Gas, and a member of the Board of Directors of Columbia Oil. H. A. Wallace is a director of Columbia Gas and also a

director of Columbia Oil. All other directors and officers of Columbia Oil have recently been or now are directors or officers of Columbia Gas or of one or more of the subsidiary companies of Columbia Gas.

Columbia Gas and Columbia Oil since 1930, have had and now have, numerous intercorporate agreements relating to the interchange of gas and oil and other matters. Said corporations have offices on adjoining floors in the City of New York, in the State of New York, and are, in effect, identical in respect of management and control.

[fol. 506] 7. Since the entry of said decree on January 29, 1936, Panhandle Eastern has been prevented by the defendants from selling natural gas in the Indiana-Ohio-Michigan area, except to Michigan Gas Transmission Company. Michigan Gas Transmission Company has been re-selling the natural gas purchased from Panhandle Eastern to various gas distributing companies within this area, at prices substantially higher than those paid by it to Panhandle Eastern. A number of the gas distributing companies to which Michigan Gas Transmission Company has been selling such gas are subsidiaries of Columbia Gas. The various contracts between Panhandle Eastern and Michigan Gas Transmission Company, and between Michigan Gas Transmission Company and said gas distributing companies, pursuant to which such gas has been sold and re-sold, reflect a scheme of operations, devised and controlled by Columbia Gas, under which natural gas which is drawn from Panhandle Eastern's sources of supply, carried up to Indiana in Panhandle Eastern's pipe line, and made available for distribution in the Indiana-Ohio-Michigan area, is fed into the Columbia System, and distributed only subject to Columbia Gas' price, production, and distribution policies and in accordance with Columbia Gas' business convenience. Panhandle Eastern has thus been precluded from engaging in commerce in natural gas in this area, and from competing in any manner with Columbia Gas and Columbia Oil. On the contrary, reduced to the status of a feeder to the Columbia System, it has been made to support the actual and contemplated monopoly maintained and sought by Columbia Gas in the transmission, distribution and sale of Natural [fol. 507] Gas in the States of Indiana, Michigan and Ohio.

II

8. Plaintiff re-alleges paragraph No. 33 of said Amended and Supplemental Petition filed in this action on October 30, 1935, which is incorporated herein as a part hereof, with the following modifications:

For the word "petitioner" in the first line of said paragraph substitute the word "plaintiff".

In the fourth line of said paragraph, immediately following the word "hereof", insert the words "as herein modified".

9. The acquisition by Columbia Oil of 404,326 shares of the common stock of Panhandle Eastern, of $10,000,000 par value Class "A" preferred stock of Panhandle Eastern, and of $1,000,000 par value Class "B" preferred stock of Panhandle Eastern, as set forth in subparagraph (b) of paragraph 6 hereof, has had the effect of (a) substantially lessening competition between Columbia Oil, Columbia Gas and the companies comprising the Columbia System on the one hand, and Panhandle Eastern on the other, (b) restraining commerce in natural gas in the States of Kansas, Missouri, Illinois, Indiana, Michigan and Ohio, and (c) tending to create and creating a monopoly in natural gas in the States of Indiana, Michigan and Ohio, in violation of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes".

[fol. 508] 10. The acquisition of the capital stock of Michigan Gas Transmission Company by Columbia Gas, as set forth in subparagraph (a) of paragraph 6 hereof, has had the effect of (a) restraining commerce in natural gas in the States of Indiana, Michigan and Ohio, and (b) tending to create and creating a monopoly in natural gas in the States of Indiana, Michigan and Ohio, in violation of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes".

III

Wherefore, Plaintiff prays that this Court adjudge that:

A. The defendants herein have made contracts and have been and now are engaged in a combination and con-

spiracy in restraint of trade and commerce in natural gas among the several states in the manner and by the means set forth herein, in violation of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies".

B. The defendants herein have been and now are engaged in monopolizing, attempting to monopolize, and combining and conspiring to monopolize trade and commerce among the several states in the manner and by the means set forth herein, in violation of the Act of Congress approved July [fol. 509] 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies".

C. The acquisition of 50% of the outstanding capital stock of Panhandle Eastern by defendant Columbia Oil, described in paragraph 8 hereof, constitutes a violation of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes".

D. The acquisition by defendant Columbia Oil of 404,326 shares of the common stock of Panhandle Eastern, representing a majority of the 728,652 shares of such common stock issued and outstanding, the $10,000,000 par value of Class "A" preferred stock of Panhandle Eastern (being the entire issue thereof, and the $1,000,000 par value of Class "B" preferred stock of Panhandle Eastern (being the entire issue thereof), constitutes a violation of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes".

E. The acquisition of the entire capital stock of Michigan Gas Transmission Company by defendant Columbia Gas & Electric Corporation constitutes a violation of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes".

F. The defendant Columbia Oil shall proceed forthwith to sell all interest which it may now have or may hereafter acquire in any securities of Panhandle Eastern.

[fol. 510] G. The defendant Columbia Gas shall proceed forthwith to sell all interest which it may now have or may hereafter acquire in any securities of Michigan Gas Transmission Company.

H. The defendants, all individuals, corporations, partnerships, associations or other persons acting, claiming or assuming to act for or in behalf of them or any of them, their officers, directors, agents and employees, their successors and assigns, and any and all persons who may directly or indirectly acquire ownership or control of the business or property of said defendants, shall be perpetually enjoined, individually and collectively, from owning, holding, acquiring, receiving, voting, or in any manner exercising ownership or control over the whole or any part of the securities issued by, or the property or business of, Panhandle Eastern or Michigan Gas Transmission Company.

I. The defendants, all individuals, corporations, partnerships, associations or other persons acting, claiming or assuming to act for or in behalf of them or any of them, their officers, directors, agents and employees, their successors and assigns, and any and all persons who may directly or indirectly acquire ownership or control of the business or property of said defendants, shall be perpetually enjoined, individually and collectively, from directly or indirectly exercising any control over, or directly or indirectly restraining or interfering in any manner with [fol. 511] the free and independent action of, Panhandle Eastern or Michigan Gas Transmission Company.

J. Plaintiff shall have such other and further relief as to this Court may seem proper.

Dated May 15, 1939.

(Sgd.) John J. Morris, Jr., U. S. Attorney for the District of Delaware. Address: U. S. Post Office Building, Wilmington, Delaware.

(Sgd.) Milton Katz, Special Assistant to the Attorney General.

(Sgd.) John S. L. Yost, Special Assistant to the Attorney General.

(Sgd.) Morris R. Clark, Special Assistant to the Attorney General.

(Sgd.) Frank Murphy, Attorney General.

(Sgd.) Thurman Arnold, Assistant Attorney General.

(Sgd.) Wendell Berge, Special Assistant to the Attorney General.

[fol. 512] EXHIBIT I

Agreement made this 31st day of January, 1936, between Panhandle Eastern Pipe Line Company (hereinafter referred to as Eastern), a corporation of the State of Delaware, party of the first part, Columbia Gas & Electric Corporation (hereinafter referred to as Columbia Gas), a corporation of the State of Delaware, party of the second part, and Columbia Oil & Gasoline Corporation (hereinafter referred to as Columbia Oil), a corporation of the State of Delaware, party of the third part.

Eastern has entered into a contract, dated the 31st day of August, 1935, with Detroit City Gas Company, whereby Eastern has contracted to supply the natural gas requirements of Detroit City Gas Company, up to the maximum amount therein specified, for the period set forth in said contract. A copy of said contract (hereinafter referred to as the Detroit Contract) is attached hereto as Exhibit A.

Section 7 of Article II of the Detroit Contract provides that it shall not become effective unless Eastern shall be able to arrange on or before February 1, 1936 for the financing of the construction of a pipe line connecting the eastern terminus of Eastern's existing pipe line at a point in Vermilion County, Indiana, adjacent to the Illinois-Indiana state line with the place of delivery specified in the Detroit Contract, as well as the reinforcement of the present pipe line of Eastern, since the present pipe line of Eastern is inadequate to deliver the quantity of gas called for by the Detroit Contract. In reliance on the present contract, Eastern has notified Detroit City Gas Company that it has been able to so arrange. The new pipe line extension must be constructed and ready for the delivery of gas not earlier than July 1, 1936, and not later than September 1, 1936. The amount required by Eastern to increase its present pipe line capacity and for working capital is estimated to be approximately $8,600,000, of which it is estimated that approximately $4,000,000 will be required in the spring of 1936, and the remainder at some subsequent date or dates.

Indiana Gas Transmission Corporation (hereinafter referred to as Indiana), a Delaware corporation, is a subsidiary of Columbia Oil and owns a natural gas transmission pipe line extending from the eastern terminus of East-

ern's existing pipe line across the State of Indiana to a connection with the pipe line of The Ohio Fuel Gas Company at King Measuring Station, near Muncie, Indiana.

Michigan Gas Transmission Corporation (hereinafter called Michigan), a Delaware corporation, is a subsidiary of Columbia Gas, organized for the purpose of constructing a pipe line extending from a point on Indiana's pipe line near Zionsville, Indiana, to the place of delivery specified in the Detroit Contract.

[fol. 513] Now, Therefore, in consideration of the mutual covenants and agreements herein set forth, the parties hereto, severally and not jointly, covenant and agree as follows:

1. Eastern agrees with the parties hereto as follows:

(a) That it will enter into a contract with Indiana for the delivery of gas through Indiana's pipe line to Michigan and will enter into a contract with Michigan for the delivery of gas by Michigan to Detroit City Gas Company, such contracts to contain such terms and provisions as shall insure the delivery to Detroit City Gas Company of natural gas in the quantities and upon the terms and conditions specified in the Detroit Contract; or, in case Michigan shall acquire said line of Indiana extending from the Illinois-Indiana state line to Zionsville, will enter into a contract with Michigan providing for the delivery of said gas by Eastern to Michigan at the Illinois-Indiana state line, without the intervention of Indiana, the terms of such single contract to have substantially the same result to Eastern as the terms of the two contracts above referred to.

(b) That it will carry out all of the terms and provisions of said contracts or contract to the end that its obligations under the Detroit Contract may be fully performed.

(c) That it will apply the funds to be provided, as hereinafter stated, to increase the capacity of its existing main pipe line to the end that it shall be able to deliver to Indiana (or Michigan) at the Illinois-Indiana state line the quantities of natural gas at the times and at the pressure necessary to carry out the terms and provisions of its proposed contract with Indiana (or Michigan) referred to in subdivision (a) of this Article 1 hereof.

(d) That it will offer pro rata to the holders of its Common Stock preemptive rights to subscribe to such number

of shares of its Common Stock at such price per share as will yield not less than $4,000,000, payable on or before April 1, 1936; and that it will sell to Columbia Oil, at such subscription price, all of the shares of Common Stock so offered to its other stockholders which shall not be subscribed for by them or by their assignees.

2. Columbia Gas agrees with the parties hereto as follows:

(a) That it will cause Michigan ~~to enter~~ into the proposed contract with Eastern referred to in Subdivision (a) of Article 1 hereof and will cause Michigan to carry out [fol. 514] the terms and provisions thereof.

(b) That it will cause Michigan to construct a natural gas transmission pipe line from a point on Indiana's existing pipe line near Zionsville, Indiana, to the place of delivery specified in the Detroit Contract, said pipe line to be of a size, design and construction adequate to deliver at said place of delivery the maximum amount of natural gas called for by the Detroit Contract, and that it will furnish the funds necessary to enable Michigan to finance the construction of said pipe line.

(c) That, to provide the additional sum of $4,600,000 required by Eastern for the further increase of its pipeline capacity, Columbia Gas will purchase from Eastern 6% Bonds of Series A under the Mortgage Trust Indenture of Eastern at par or, if the restrictions of said Mortgage Trust Indenture, do not at the time permit this, will purchase Second Mortgage 6% Bonds of Eastern at par, which shall be exchangeable at the option of Columbia Gas into such Bonds of Series A when the restrictions of said Mortgage Trust Indenture to permit such exchange can be met.

(d) That it will advance, on open account to Columbia Oil until funded by the agreement of the parties, the necessary funds required by Columbia Oil to carry out its obligations under this Agreement.

3. Columbia Oil agrees with the parties hereto as follows:

(a) That, upon the issuance by Eastern of rights to subscribe for shares of Common Stock of Eastern, as provided in Subdivision (d) of Article 1 of this Agreement, it will (1) immediately subscribe for its pro rata proportion of

such shares, and (2) on April 2, 1936, will either (a) purchase such of the shares of Common Stock of Eastern so offered for subscription as shall not have been subscribed for by the stockholders of Eastern or their respective assignees or (b) if the time for the payment of such subscriptions shall have been extended by Eastern to a date later than April 1, 1936, advance to Eastern the amount that would be payable if all of the subscriptions to such shares of Common Stock which may be exercised later than April 1, 1936, had been exercised, the portion of such advance represented by the subscription rights later exercised to be repaid by Eastern, with interest at the rate of 6% per annum, upon the exercise of such subscription rights. [fol. 515] (b) That it will cause Indiana to enter into the proposed contract with Eastern referred to in Subdivision (a) of Article 1 hereof, and will cause Indiana to carry out the terms and provisions thereof (unless Eastern shall elect to contract solely with Michigan as herein provided.)

(c) That it will cause Indiana to make any necessary additions to or reinforcements of its existing pipe line necessary to enable Indiana to transport through said pipe line the maximum quantities of gas called for by the requirements of the proposed contract between Eastern and Indiana referred to in Subdivision (a) of Article 1 hereof, and that it will provide Indiana with the funds necessary therefor.

4. All of the parties hereto severally agree with each other as follows:

(a) The parties hereto recognize the possibility that the corporate relationships between the parties hereto, Indiana and Michigan, may be changed, through the acquisition by Columbia Gas or by Michigan of the stock or pipe line of Indiana or by the merger of Indiana and Michigan, or by a combination of the foregoing, or otherwise. In any such case, this Agreement and the contracts referred to in Subdivision (a) of Article 1 hereof shall be appropriately amended, provided that such amendments shall be such as to preserve the following basic principles:

(1) That Columbia Gas and Columbia Oil shall be responsible for their respective obligations with respect to the financing of the reinforcement of Eastern's existing

pipe line as set forth in Subdivision (c) of Article 2 and in Subdivision (a) of Article 3 hereof;

(2) That Columbia Gas and Columbia Oil shall each be severally responsible for the financing of that portion, if any, of the pipe line from the Illinois-Indiana State line to the Place of Delivery specified in the Detroit Contract, which shall at the time in question be owned by their respective subsidiaries;

(3) That the operating contracts among the several pipe line companies (including Eastern) shall contain such terms and provisions as shall insure the delivery to Detroit City Gas Company of natural gas in the quantities and upon the terms and conditions specified in the Detroit Contract; and

[fol. 516] (4) That such operating contracts shall be as favorable to Eastern as the forms of contract referred to in Subdivision (a) of Article 1 hereof.

(b) That if, for any reason not involving a breach of the Detroit Contract by Eastern, Indiana or Michigan, the Detroit Contract shall fail to be performed, all the obligations of the parties hereto then unperformed shall become void and shall be of no further force or effect whatsoever.

(c) That this Agreement is subject to the securing of such consents to the taking of the action described hereunder from Federal and State authorities as may be necessary.

5. Anything herein contained to the contrary notwithstanding, Eastern shall have the right provided for in clause (b) of Article V of the Stipulation accompanying the Decree of the United States District Court for the District of Delaware entered on January 29, 1936, in the cause entitled United States of America, Petitioner, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, and others, Defendants, being cause No. 1099 in Equity, which Stipulation was entered in the United States District Court for the District of Delaware contemporaneously with said Decree and is hereafter referred to as the Stipulation, to arrange for the financing of its undertakings under the Detroit Contract otherwise than through the assistance of Columbia Oil and Columbia Gas which they have agreed to furnish under their agreements herein.

It is therefore agreed by all parties hereto that Eastern shall have twenty days from the date of the curing of the default of its 6% Promissory Notes referred to in said clause of said Stipulation, or their retirement, in which to arrange for such financing from other sources. Eastern agrees that it will forthwith take the appropriate action necessary for such curing of default or retirement of its Notes and that if, by the expiration of twenty days thereafter, it shall not have notified in writing Columbia Oil and Columbia Gas, by notice delivered to their respective New York City offices, that it has been able to arrange such financing from other sources, this Agreement shall be binding on Eastern and Columbia Oil and Columbia Gas according to its terms. Pending said period of twenty days, both Columbia Oil and Columbia Gas remain bound according to the terms hereof. In case Eastern shall be able to arrange said financing from other sources and shall so notify the other parties hereto, both Columbia Oil and Columbia Gas shall be freed of their obligations hereunder to provide such financing. Eastern agrees that it will submit any such alternative method of financing, before entering into it, to the Trustee appointed under said Decree for his approval [fol. 517] and will not enter into it without his written approval.

In Witness Whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

Panhandle Eastern Pipe Line Company, By Jas. L. Harrop, Vice-President. [Corporate Seal] Attest: Leith V. Watkins, Secretary. Columbia Gas & Electric Corporation, By E. Reynolds, Jr., Vice-President. [Corporate Seal] Attest: H. H. Pell, Jr., Secretary. Columbia Oil & Gasoline Corporation, By Charles A. Munroe, President. [Corporate Seal] Attest: W. A. Blind, Asst. Secretary. (3468)

[fol. 518] IN UNITED STATES DISTRICT COURT

MOTION OF COLUMBIA GAS & ELECTRIC CORPORATION, ET AL. FOR APPROVAL OF PLAN FOR MODIFICATION OF CONSENT DECREE, & C.—Filed June 20, 1939

Columbia Oil & Gasoline Corporation (hereinafter referred to as Columbia Oil) and Columbia Gas & Electric Corporation (hereinafter referred to as Columbia Gas), each being one of the defendants in the above-entitled cause, now move the Court:

(1) For an order providing that the decree in the above cause (hereinafter referred to as the Consent Decree) entered January 29, 1936, pursuant to a stipulation dated January 29, 1936, shall upon approval by this Court and, to the extent required by law, of the Securities and Exchange Commission, of the following Proposed Plan, be modified to meet the changed conditions resulting from the carrying out of such Plan, as follows:

I

Section II and Section IV of said Consent Decree shall be changed to provide that the following injunctions and other provisions shall be substituted for and in lieu of the present injunctions, provisions and language of said Sections II and IV:

A. The defendants, Columbia Gas, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, shall [fol. 519] be perpetually enjoined, individually and collectively, from directly or indirectly acquiring, owning or voting any securities issued by Panhandle Eastern Pipe Line Company (hereinafter referred to as Panhandle Eastern), and also any securities issued by Michigan Gas Transmission Corporation if and when but not until after the investment of Columbia Gas therein shall have been sold as contemplated in said Plan.

B. The defendant Columbia Gas shall be perpetually enjoined from:

(a) acquiring, owning or voting any securities issued by Columbia Oil, or any successor thereto, in addition to the Debentures of Columbia Oil now owned by it, provided

that Columbia Gas may acquire and own up to $2,000,000 principal amount of additional Debentures of Columbia Oil if called upon to fulfill its existing commitment so to do, and further provided that Columbia Gas may continue to own and hold all Debentures of Columbia Oil now owned or hereafter so acquired until paid as provided in said Plan, and

(b) participating in or exercising any direction or control over the management of Columbia Oil, or any successor thereto, or Panhandle Eastern, and also the management of Michigan Gas Transmission Corporation if and when but not until after the investment of Columbia Gas therein shall have been sold as contemplated in said Plan.

C. The defendant Philip G. Gossler shall, within five years after the entry of the order approving the Plan, sell all stock now owned by him in Columbia Oil, or any successor thereto, and, in the intervening period so long as [fol. 520] he shall own any stock in Columbia Oil, or any successor thereto, shall be enjoined from voting any shares of such stock or suggesting how any shares of such stock owned by any of his relatives should be voted.

D. The defendants, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, shall be perpetually enjoined, individually and collectively, from (a) acquiring, owning or voting any securities issued by Columbia Oil, or any successor thereto, in addition to the securities, if any, issued by said Columbia Oil now owned by them, and (b) from participating in or exercising any direction or control over the management of Columbia Oil, or any successor thereto, or Panhandle Eastern, and also the management of Michigan Gas Transmission Corporation if and when but not until after the investment of Columbia Gas therein shall have been sold as contemplated in said Plan.

The decree shall state that nothing in the foregoing or other provisions thereof shall be construed to prevent or restrain in any manner the free and independent action of Columbia Gas and its subsidiary companies in the production, transportation, sale or delivery of gas in competion with Panhandle Eastern, or Michigan Gas Transmission Corporation or any other corporation, association, partnership or person.

II

The provisions of Section III of said Consent Decree appointing Gano Dunn trustee for the purposes and with the powers and duties set forth in said Section III shall [fol. 521] be terminated and the trusteeship of Gano Dunn thereunder shall be terminated, and said Gano Dunn shall on the entry of the order approving the Plan retransfer to Columbia Oil all the stock of Panhandle Eastern now held by him as such trustee. On filing his final report as such trustee in this Court, and the approval thereof, said Gano Dunn shall be discharged as such trustee.

III

Section V of said Consent Decree shall be modified to read as follows:

"That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof, and for the further purpose of requiring the resignation of any officer or director of Columbia Oil, or any successor thereto, whenever such step may be necessary to effectuate the purposes of the decree."

IV

A new section shall be added to the Consent Decree whereby Columbia Gas and Columbia Oil shall be required to carry out their respective parts under the Proposed Plan.

(2) For an order setting a date for a hearing upon the propriety of so modifying the Consent Decree.

Proposed Plan

1. Columbia Oil & Gasoline Corporation, hereinafter referred to as "Columbia Oil", will promptly transfer to Columbia Gas & Electric Corporation, hereinafter referred [fol. 522] to as "Columbia Gas", all of its properties other than its interest in Panhandle Eastern Pipe Line Company, hereinafter referred to as "Panhandle Eastern", these properties being the stock (constituting all of the author-

ized and outstanding shares) and obligations, if any (constituting all outstanding obligations if any remain at that time which have not been released by Columbia Oil to the respective debtor companies) of the following subsidiary companies:

The Preston Oil Company
The Viking Distributing Company
The Virginia Gasoline & Oil Company
The Union Oil & Gasoline Company, and
The Ohio Fuel Supply Company

2. Columbia Gas will at the same time surrender to Columbia Oil 400,000 shares of the participating preferred stock of Columbia Oil (being all of the authorized and outstanding shares of said class of stock).

3. Pending such transfer, Columbia Oil will see that no dividends are paid and no transactions are entered into, except transactions in the ordinary course of business, by said Subsidiary Companies.

4. Columbia Gas will at the same time execute a suitable agreement to save Columbia Oil harmless from any liability which may arise under the suit, instituted by John L. Davies in 1937, against Columbia Gas, The Preston Oil Company, and others, and now pending in the Court of Common Pleas of Franklin County, Ohio.

5. In regard to the twenty-year debentures of Columbia Oil due February 1, 1956, outstanding in the principal [fol. 523] amount of $21,000,000, and owned by Columbia Gas:

(a) Columbia Oil will agree to use its best efforts to dispose of the $10,000,000 Class A Preferred Stock of Panhandle Eastern owned by it, at not less than par, to a purchaser who has no connection or interest, direct or indirect, with or in Columbia Gas or through the refinancing thereof by Panhandle Eastern from the sale of a new preferred stock to such a purchaser, and Columbia Oil will apply the moneys thus raised to reduce the total of debentures outstanding by at least the amount of $10,000,000.

(b) Upon payment by Columbia Oil on account of said debentures, reducing the total outstanding to not over $11,000,000, Columbia Gas will reduce the interest rate of

said debentures which will remain outstanding to 3% per annum.

(c) The maximum sinking fund payments of $600,000 per year, provided for in the Indenture Agreement under which said debentures were issued, are to remain unchanged except that the times set forth in the said Indenture for semi-annual payments into the sinking fund shall be advanced from May 1, 1941, and November 1, 1941, respectively, to May 1, 1940, and November 1, 1940, respectively. The Indenture is also to be amended to include a provision that, in the event a dividend in excess of 20¢ per share in any one year is paid on the outstanding common stock of Columbia Oil, an amount in dollars equal to the excess dividends so paid shall be paid as additional sinking fund.

[fol. 524] (d) In the event of any default in payment on account of said debentures, Columbia Gas agrees that under no circumstances shall it be permitted to acquire ownership or control of any securities of Panhandle Eastern owned by Columbia Oil. If Columbia Gas should sue upon said debentures or any part thereof and obtain a judgment, and if there should be a levy upon any securities of Panhandle Eastern owned by Columbia Oil in execution of such judgment, Columbia Gas will not be permitted to be a purchaser at the judgment sale. Appropriate modifications to the foregoing effect shall be made in the Indenture relating to said debentures.

(e) At the time of the transfer to Columbia Gas of the interest of Columbia Oil in the Subsidiary Companies provided for in Section 1 above, Columbia Oil will apply all cash available, in excess of $50,000 net working capital, to the retirement at par and accrued interest of its Debentures held by Columbia Gas.

6. All officers and directors of Columbia Oil shall resign upon the entry of the order and the approval of the Plan by the Securities and Exchange Commission (to the extent required by law), and be replaced by officers and directors not objectionable to the Department of Justice, such directors to own no stock or securities of Columbia Gas. Such directors shall not include anyone who is now, or ever has been, an officer, director or employee of Columbia Gas or any of its subsidiary companies.

[fol. 525] No such officer or director shall be appointed or elected except upon filing an affidavit or testifying in open court that he has not any connection or interest, direct or indirect, with or in Columbia Gas; and that he never has had any such connection except as may be specified in such testimony or such affidavit. Any such affidavit shall, upon filing, become part of the record upon which said consent decree is based.

The number of directors of Columbia Oil shall be no larger than the number of directors to which Columbia Oil may be entitled upon the board of Panhandle Eastern, and the directors of Columbia Oil shall be designated by Columbia Oil as its representatives upon the board of directors of Panhandle Eastern.

7. The name of Columbia Oil will be changed, subject to the necessary authorization of its stockholders, so as to eliminate the word "Columbia".

8. Subject to the approval of the Securities and Exchange Commission, if required by law, Columbia Gas shall sell the stock and indebtedness of the Indiana Gas Distribution Corporation and the Michigan Gas Transmission Corporation owned by it to Panhandle Eastern at any time within one year from the date of the entry of the order, if said Company wishes to buy the same, for a price equal to the actual investment of Columbia Gas therein, provided, Panhandle Eastern also purchases at the same time the gas pipe line in Indiana belonging to the Ohio Fuel Gas Company for the [fol. 526] price of $355,191, this being calculated by Columbia Gas as the fair value thereof on the basis of a sale by it during the current year of part of this line to an independent company. However, if, during said year, Columbia Gas receives from other sources, not connected directly or indirectly with Columbia Gas, an offer satisfactory to it to purchase such stock and indebtedness, Columbia Gas will give Panhandle Eastern written notification of the proposed terms of sale and give Panhandle Eastern ninety days within which to meet such terms. If, during such ninety-day period, Panhandle Eastern does not meet the terms of said outside offer, then Columbia Gas shall be free to accept said offer.

If, at the expiration of said year, no such sale shall have been made, Columbia Gas will still stand ready to sell such stock and indebtedness of said companies on the same con-

ditions as above, subject to the approval of the Securities and Exchange Commission, if required by law, to others. To effectuate such sale, a trustee shall be appointed by the Court to sell such properties: Provided, that such trustee shall not, unless Columbia Gas consents, accept any bid for such properties at a price amounting to less than its actual investment therein, and provided, further, that such properties shall not be sold to any purchaser who is in any way connected or interested, directly or indirectly, with or in Columbia Gas. The trustee shall be appointed for one year, and shall not be qualified to succeed himself.

9. The carrying out of the Plan shall be contingent upon the approval to the extent required by law of the Securi-
[fol. 527] ties and Exchange Commission.

(Sgd.) Daniel O. Hastings, Attorneys for defendant Columbia Oil & Gasoline Corporation. (Sgd.) Clarence A. Southerland, Attorneys for defendant Columbia Gas & Electric Corporation. (Sgd.) William H. Button. (Sgd.) James B. Alley. (Sgd.) Auchincloss, Alley & Duncan, of Counsel for Columbia Oil & Gasoline Corporation. (Sgd.) Douglas M. Moffat. (Sgd.) Cravath, deGersdorff, Swaine & Wood, of Counsel for Columbia Gas & Electric Corporation.

[fol. 528] IN UNITED STATES DISTRICT COURT

MOTION BY MISSOURI-KANSAS PIPE LINE COMPANY FOR LEAVE TO INTERVENE—Filed July 5, 1939

Missouri-Kansas Pipe Line Company, a corporation of the State of Delaware, by Biggs & Lynch, its attorneys, moves this Honorable Court for an order granting it leave to intervene in the above-entitled action and to file the annexed petition.

This motion is made upon all the pleadings and proceedings heretofore had herein, and upon the grounds more particularly set forth in the petition hereto annexed.

Wherefore, petitioner moves this Court for an order granting it leave to intervene in this proceeding and to file the annexed petition, and requiring the parties defendant respectively to answer or otherwise plead thereto, within

twenty (20) days from the date of service, and for such other and further relief as may be just and proper.

Dated, July 3, 1939.

Biggs & Lynch, by (Sgd.) Stewart Lynch, Solicitors for Petitioner.

[fol. 529] IN UNITED STATES DISTRICT COURT

PETITION OF MISSOURI-KANSAS PIPE LINE COMPANY FOR INTERVENTION—Filed July 5, 1939

The Petition of Missouri-Kansas Pipe Line Company, the above named Applicant, respectfully shows to this Court and alleges:

I. Applicant, Missouri-Kansas Pipe Line Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

II. On March 6th, 1935, United States of America commenced this suit in equity against the above named defendants by the filing of a Petition herein, alleging generally that the said defendants had entered into a conspiracy to violate and had violated the Anti-Trust laws of the United States.

III. Thereafter and on October 30th, 1935, United States filed an Amended and Supplemental Petition (hereinafter referred to as the "Amended Petition"). Reference is made to said Amended Petition and to the Exhibits annexed thereto as if herein fully and at length set forth.

IV. Said Amended Petition alleged in substance that the defendants had been and were engaged in a combination and conspiracy to restrain trade and commerce in natural gas among the States of Kansas, Missouri, Illinois, Indiana, Michigan and Ohio; that Missouri-Kansas Pipe Line Company had undertaken the construction of a large pipe line to transport natural gas from the Texas Panhandle and Kansas into the States of Indiana, Michigan, Ohio and [fol. 530] elsewhere, where Missouri-Kansas Pipe Line Company planned to sell its natural gas; that for such purpose, Missouri-Kansas Pipe Line Company caused the organization of Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle Eastern") and be-

came the owner of the entire capital stock of that corporation; that the above named defendants then entered into a combination and conspiracy to monopolize trade and commerce in natural gas in the States of Indiana, Michigan and Ohio, and to prevent Missouri-Kansas Pipe Line Company from constructing the said pipe line and, failing that, to obtain control of the management and operation of Panhandle Eastern; and the defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation (hereinafter referred to collectively as the "Columbia Companies"), having failed in their attempts to prevent the construction of the said Panhandle Eastern pipe line, purchased a half interest therein in the month of September, 1930, and obtained control of the management and operation of Panhandle Eastern by the means in said Amended Petition alleged; and that the said Columbia Companies in pursuance of said conspiracy caused Panhandle Eastern to fail and neglect opportunities to sell its gas to customers, including the Cities of Indianapolis, Kansas City, St. Louis and Detroit, as a result of which Missouri-Kansas Pipe Line Company was forced into receivership in the Chancery Court of Delaware; after which [fol. 531] defendants took steps and proceedings intended to assure the acquisition by them of the half interest in said Panhandle Eastern then held by the Receivers of Missouri-Kansas Pipe Line Company; all for the purpose of causing Panhandle Eastern Pipe Line Company to be wholly absorbed by the Columbia Companies, thus assuring to such companies a monopoly in natural gas in the potential markets of Indiana and Michigan.

V. The said Amended Petition prayed for a Decree adjudging, among other things, that the acquisition by the Columbia Companies of the said one-half of the capital stock of Panhandle Eastern was in violation of the Anti-Trust Laws; that the proposed acquisition of the remaining one-half be restrained as a further violation of the Anti-Trust Laws; that the defendants be enjoined from acquiring assets and from acquiring or voting securities of Panhandle Eastern and from exercising any dominion or control over Panhandle Eastern and that the defendant Columbia Oil & Gasoline Corporation be required to divest itself of all securities of Panhandle Eastern then owned or thereafter to be acquired by it.

VI. Thereafter and on the 29th day of January, 1936, pursuant to a consenting stipulation, a Decree of this Court was duly made and entered against all the defendants. Reference is made to said Decree and Stipulation as if herein fully and at length set forth. Said Decree, among other things, appointed Gano Dunn, Esq. as Trustee, and directed the defendant Columbia Oil & Gasoline Corporation to transfer to said Trustee within ten days thereafter all of its [fol. 532] stock then owned and thereafter all stock subsequently acquired in Panhandle Eastern Pipe Line Company, having present or potential voting rights, the said Trustee to hold the legal title to said stock and to exercise all the rights and privileges incidental to the absolute ownership thereof, upon certain terms and conditions therein in said Decree provided. The said Trustee was given the power of removal of any director of Panhandle Eastern nominated by said Columbia Oil & Gasoline Corporation. Said Trustee was further directed to report to the Court semi-annually and his compensation and disbursements were directed to be paid in equal shares by the defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation on quarterly accounts to this Court. By said Decree property consisting of 100,000 shares of Class "A" preferred stock of Panhandle Eastern Pipe Line Company, 10,000 shares of Class "B" preferred stock of said company, and 404,326 shares of the common stock of said company were placed and now remain in the custody of said Gano Dunn as an officer of this Court and in the custody of this Court. All of said stock is now registered in the name of "Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation, appointed pursuant to Decree dated Jan. 29, 1936, in Cause No. 1099 in Equity in the United States District Court for the District of Delaware." Said stock constitutes the controlling stock of said Panhandle Eastern Pipe Line Company, which has assets of the value of upwards of $50,000,000.

Said Decree contained various injunctive and other pro- [fol. 533] visions to which reference is hereby made as if they were here fully set forth.

VII. On December 21, 1938, the United States of America filed herein a Supplemental Complaint and a motion for leave to serve the same. Said motion was thereafter granted, and the defendants herein were on January 12,

1939 directed by order of this Court to answer the said Supplemental Complaint, and thereafter and on or about May 15, 1939 the defendants filed their respective answers thereto.

VIII. Said Supplemental Complaint, to which reference is hereby made as if herein fully and at length set forth, alleged in part as follows:

"The course of events since the entry of said decree on January 29, 1936, has made it increasingly clear (1) that the only effective way to restore and maintain a position of free and independent action for Panhandle Eastern is to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern, as contemplated by the last paragraph of section III of said decree, and (2) that to accomplish the purpose of said decree, it is necessary to supplement said decree by a further order requiring the formulation and submission to this court for approval of a suitable plan or plans to accomplish such divestiture. * * *" Said Supplemental Complaint prayed as follows:

"A. That this honorable Court exercise the jurisdiction retained by it in Section V of said decree of January 29, 1936, for the purposes therein stated, to wit, to give full effect to said decree and to make such other and further orders and decrees and to take such action as may be necessary to the carrying out thereof, and enter a judgment herein to the following effect:

[fol. 534] 1. Adjudging that, in order to achieve the declared primary purpose of said decree of January 29, 1936, namely, to restore Panhandle Eastern to, and maintain Panhandle Eastern in, a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others, it is necessary to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern.

2. Adjudging that plaintiff has the right to such further relief in this action as may be necessary to give full effect

to said decree of January 29, 1936, and to carry out the purposes thereof.

3. Directing Columbia Gas to divest itself of all control, direct or indirect, legal or practical, of Panhandle Eastern, either by disposing of all interest which it may have in any stock of any class having present or potential voting rights in Columbia Oil, or by causing Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern; and, to that end:

(a) Directing Columbia Oil to proceed straightway to formulate and submit to this Court for approval, through the trustee for sale constituted in accordance with subsection 4 of this section III, a plan for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern;

(b) Directing Columbia Gas to proceed straightway to formulate and submit to this Court for approval, as an alternative to any plan submitted by Columbia Oil pursuant to paragraph (a) of this subsection 3, a plan for the sale or other disposition by it of all interest which it may have in any securities having present or potential voting rights in Columbia Oil.

4. Reconstituting the voting trust established pursuant to said decree of January 29, 1936, so as:

(a) To make the voting trustee a trustee for sale, with the powers and duties, and subject to the conditions, set forth in said decree of January 29, 1936, and with the further duties of (1) formulating and submitting to this [fol. 535] Court for approval a plan for the sale or other disposition by Columbia Oil of all interest which it may have in any stock of Panhandle Eastern, (2) receiving, examining and transmitting to this Court with a recommendation for approval or disapproval, any offer which may be submitted by any person for the purchase of any securities in which Columbia Oil may have an interest or of which Columbia Oil may be the issuer, and any plan submitted by Columbia Oil for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern, pursuant to paragraph (a) of subsection 4 of this section III, and (3) selling or otherwise disposing of such stock in accordance with such a plan or offer ap-

proved by this Court and in accordance with any further order of this Court relating thereto;

(b) To provide that the term of appointment of the person designated as said trustee for sale shall expire not later than two years from the date of entry of judgment herein, and that such person shall not be subject to reappointment as such trustee; and

(c) To empower said trustee to employ such accountants, engineers, appraisers or other technicians and experts as may be necessary to assist him in discharging his duties.

B. That plaintiff have such other and further relief as to this Court may seem proper."

IX. On or about June 20, 1939, defendants Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation filed in this cause a proposed Plan for compliance with said Decree of January 29, 1936, and a motion for approval of the Plan and for modification of said Decree "to meet the changed conditions resulting from the carrying out of such Plan" if approved. Said motion and Plan contemplate, among other things, the disposition and retransfer by said Trustee to Columbia Oil & Gasoline Corporation of all stock of Panhandle Eastern Pipe Line Company held by him as such Trustee as aforesaid, and the discharge of such Trustee.

[fol. 536] X. Upon the said motion this Court made an order on June 20, 1939, setting down the said motion for hearing on July 10, 1939, directing that the Clerk of this Court give notice of said hearing to Missouri-Kansas Pipe Line Company, among others, in order that at such hearing Missouri-Kansas Pipe Line Company might appear and be heard to such extent as the Court should then determine. Said order further provided: "Nothing herein contained shall be construed as recognizing the right of * * * Missouri-Kansas Pipe Line Company to intervene herein or become a party hereto". Said order, motion and plan were served upon Missouri-Kansas Pipe Line Company on June 23, 1939. They are made a part hereof by reference as if here fully set forth.

XI. Notwithstanding the expressed purposes and provisions of said Decree of January 29, 1936, the defendants Columbia Gas & Electric Corporation and Columbia Oil

& Gasoline Corporation now have and exercise effective control of Panhandle Eastern Pipe Line Company. Said Columbia Companies are in effect identical in respect of management and control. In order that the declared purposes of said Decree may be realized, it is necessary that said Decree be supplemented by a further order requiring the elimination of said Columbia Companies from control or influence over said Panhandle Eastern Pipe Line Company by divestiture of their stock holdings therein by such means as the Court shall deem effective to such end.

[fol. 537] XII. The Plan proposed by the Columbia Companies as aforesaid would vest permanent control of Panhandle Eastern Pipe Line Company in Columbia Oil & Gasoline Corporation, the controlling stockholders of which (including certain officers and directors of Columbia Gas & Electric Corporation, their personal holding companies, and New York United Corporation), are also the controlling stockholders of Columbia Gas & Electric Corporation. Said Columbia Oil & Gasoline Corporation would be freed from the injunctive provisions of said Decree. Said plan would in no respect fulfill the declared purposes of said Decree.

XIII. Missouri-Kansas Pipe Line Company, the Applicant above named, is the same corporation by that name mentioned and referred to in said Amended Petition of the United States in this cause, and in the Stipulation incorporated in said Decree. It is substantially interested in the subject matter of this suit and its interests are affected by this suit and by the said Decree herein and will be further affected by the further proceedings to be had in this Court pursuant to the said Supplemental Complaint of the United States and the said Motion and Plan filed on June 20, 1939, as aforesaid, by reason of the following:

(1) The principal asset of Applicant is its common stock of Panhandle Eastern Pipe Line Company, amounting to 324,326 shares of the 728,652 common shares outstanding. Said common stock owned by Applicant is of a value of many millions of dollars and constitutes all the outstanding stock of Panhandle Eastern Pipe Line Company except [fol. 538] that which is beneficially owned by Columbia Oil & Gasoline Corporation, as aforesaid, the legal title to which is held by said Gano Dunn, as Trustee as aforesaid.

(2) Applicant has an interest in and is so situated as to be vitally affected by the disposition of the said property in the custody of this Court and of its officer as aforesaid, and will be adversely affected if said Plan should be approved and said motion granted, and unless said disposition is made to parties wholly independent of and disconnected with any of the defendants herein.

(3) Applicant will be injured in its property unless said Panhandle Eastern Pipe Line Company is freed from all control by the Columbia Companies and is maintained in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with the Columbia Companies and others, as contemplated by said Decree, in order that said Panhandle Eastern Pipe Line Company may market its vast reserves of natural gas freed from any restraint from said Columbia Companies.

XIV. The representation of the interest of Missouri-Kansas Pipe Line Company by the plaintiff herein is or may be inadequate and Missouri-Kansas Pipe Line Company will be bound by the judgment in this cause.

XV. Applicant alleges that it is entitled to intervene herein and be heard as a party to this cause on any hearing upon the said Plan and Motion of the Columbia Companies and on any other Plan that may hereafter be filed.

[fol. 539] Wherefore, Applicant Missouri-Kansas Pipe Line Company prays:

1. For an order granting to it leave to intervene herein;

2. That the proposed Plan and Motion of the defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, dated June 20, 1939, be disapproved and denied;

3. That this honorable Court supplement its Decree of January 29, 1936, herein by such order as to it may seem proper for the accomplishment of the declared purposes of said Decree by the divestiture of all ownership of the defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation of securities of Panhandle Eastern Pipe Line Company.

4. That such other and further relief be granted as to this honorable court may seem just and equitable.

And the Applicant will ever Pray.

Missouri-Kansas Pipe Line Company, by (Sgd.) A. M. James, Assistant Secretary, Petitioner. (Corporate Seal.) (Sgd.) Stewart Lynch, Solicitors for Petitioner.

[fol. 540] *Duly sworn to by A. M. James. Jurat omitted in printing.*

[fol. 541] IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION BY MISSOURI-KANSAS PIPE LINE COMPANY FOR LEAVE TO INTERVENE—Filed July 10, 1939

And now, to wit, this 10th day of July, A. D. 1939, this cause having come on to be heard upon the motion of Missouri-Kansas Pipe Line Company for leave to intervene in this proceeding, after hearing counsel for the respective parties, upon consideration thereof,

It is Ordered by the court that said motion be and hereby is denied without prejudice to the right of the said Missouri-Kansas Pipe Line Company to be heard amicus curiae on questions of law and fact in regard to the fairness and effectiveness of the proposed plan filed herein June 20, 1939, by Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, two of the defendants in this cause, and for a modification of the decree entered in this cause, January 29, 1936, and referred to as the "consent decree."

(Sgd.) John P. Nields, J.

[fol. 542] IN UNITED STATES DISTRICT COURT

ORDER APPOINTING SPECIAL MASTER—Filed July 10, 1939

And now, to-wit, this 10th day of July, A. D. 1939, this cause having come on to be heard pursuant to the order entered herein on the 20th day of June, A. D. 1939, upon

the motion of Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation, two of the defendants in said cause, for an order providing that the consent decree entered in this cause January 29, 1936, be modified as in said motion set forth, and in accordance with the terms of a certain Proposed Plan in said motion set forth, it is

Ordered by the Court that this proceeding be and hereby is referred to William Prickett, Esq., of Wilmington, Delaware, as Special Master, with the usual powers of Special Masters in Equity, to consider the said motion of Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation above referred to, and the proposed modifications of the said consent decree in said motion set forth, and to take testimony, hear arguments of counsel, and make report to this Court of his findings of fact, conclusions of law and recommendations concerning the said motion and said Proposed Plan.

It is Further Ordered by the Court that the said Special Master shall forthwith proceed from day to day with the hearings herein directed to be held, and shall report to the Court as above directed with all possible speed and not [fol. 543] later than five days after the conclusion of the hearings. The Special Master shall embody such findings, conclusions and recommendations in a report to be filed with the Clerk of this Court, and shall give written notice of such filing to the parties. Exceptions by any party to any finding or recommendation contained in the report of the Special Master shall be in writing and filed with the Clerk of this Court within ten days after the date of the filing of such report.

It is Further Ordered by the Court that the City of Detroit, a municipal corporation of the State of Michigan, the City of Toledo, a municipal corporation of the State of Ohio, and Missouri-Kansas Pipe Line Company, a corporation of the State of Delaware, shall be permitted by the Special Master to appear at the hearings before said Special Master as amici curiae but not as intervenors.

(Sgd.) John P. Nields, J.

[fol. 544] IN UNITED STATES DISTRICT COURT

OPINION OF WILLIAM PRICKETT, SPECIAL MASTER—Filed July 29, 1939

Questions Not Considered

The following questions have not been considered.

I. Whether the exchange of 400,000 shares of preferred stock of Columbia Oil by Columbia Gas for the assets and liabilities of the five subsidiaries of Columbia Oil is fair, either from the point of view of Columbia Oil or that of Columbia Gas, that being a question for the boards of the two companies to decide.

II. The amount of the "actual investment" of Columbia Gas in Michigan Gas and Indiana Gas, this being the figure at which, under the plan, Panhandle Eastern may take over these two companies from Columbia Gas. This question was excluded, first, because its determination was not urged by the Government and was objected to by Columbia Gas and Columbia Oil; second, unless Panhandle Eastern should exercise its option to buy at Columbia Gas's "actual investment", there will be no necessity to decide either what the term, "actual investment" means or what the actual investment at the time of the exercise of the option will be; third, because the investment varies from time to time depending on the amount of advances by Co- [fol. 545] lumbia Gas to Michigan Gas and Indiana Gas and the repayments by these two companies to Columbia Gas at the time in question; last, because it was apparently a question of considerable difficulty and the reference to me required a report at a very early date.

Assumptions

I have approached consideration of the questions referred to me on the basis of the following assumptions:

I. Panhandle Eastern should not be dominated or controlled directly or indirectly by Columbia Gas and Panhandle Eastern should be maintained in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others. This is the purpose recited in the consent decree

in this proceeding and I understand that what I am to decide is whether the motion and plan will, in my opinion, accomplish that purpose.

Hereafter when the word "plan" is used, it is intended to refer to both the "motion" and the "plan".

II. In view of events before and after the entry of the consent decree, any plan proposed by Columbia Gas and Columbia Oil is to be the subject of scrutiny; before recommending that the plan be accepted, it must appear to me that the plan will accomplish the purpose of the decree.

III. The burden of showing that their plan will accom- [fol. 546] plish this purpose is on the proponents, Columbia Oil and Columbia Gas.

IV. The present consent decree remains unaffected so far as Burt R. Bay and John H. Hillman, Jr., defendants in the consent decree, who have not joined in the present motion and plan, are concerned.

Opinion

In the Government's amended complaint filed December 21, 1939, in substance, there are proposed one of two alternatives, either that Columbia Gas divest itself of control of Columbia Oil or that Columbia Oil divest itself of Panhandle Eastern. The proposed plan adopts the first alternative. The plan will accomplish the intended result if Columbia Oil is completely freed from the influence of Columbia Gas or, if the influence is to continue, it is rendered harmless.

The main features of the plan have been summarized in connection with the findings.

I. Injunctions

The plan contains various provisions for injunctions against the defendants doing certain things, among others, participating in or exercising any direction or control over the management of Columbia Oil, Panhandle Eastern, and if Columbia Gas sells its interest in Michigan Gas, of that company.

The consent decree also contained elaborate injunctive provisions, forbidding the defendants from exercising any

domination or control over Panhandle Eastern. In spite of these provisions, however, this influence and control has [fol. 547] apparently persisted, resulting in the renewed complaints of the Government. So I conclude that the injunctions alone were not, and will not, be effective, to prevent the abuses complained of.

Consequently I disregard the injunctive provisions and look further to see whether the other provisions of the plan will probably be effective to accomplish the desired result.

II. Disposition of the Gossler Stock

Philip G. Gossler was for a long time President of Columbia Gas, is now Chairman of its board and is the largest individual stockholder of Columbia Oil, holding 75,872 shares of its common stock; the plan provides that within five years he shall sell all his Columbia Oil stock and in the interval shall not vote it.

In addition, however, to the Gossler stock, there remains Columbia Oil stock held by the following persons, who, on account of their immediate connections with Columbia Gas would, it may be assumed, put the interests of that company ahead of those of Columbia Oil; these persons are not defendants in this action and so are not subject to any decree which may be made:

Phillip G. Gossler	75,872	shares
Mrs. Gossler	2,385	"
Mrs. Katherine Clay, daughter of Mr. Gossler	30,358	"
[fol. 548] United Corporation and its subsidiary, New York United Corporation, which, together are the holders of 28% of the common stock of Columbia gas	84,766	"
The estate of George W. Crawford, a former defendant in this action and a former president and Chairman of the Board of Columbia Gas	50,799	"
The Estate of E. W. Edwards, the second largest stockholder of Columbia Gas and a director of that company until 1938	25,009	"

Present officers and directors of Columbia Gas:		shares
W. C. Beckjord	400	"
W. W. Freeman	48	"
D. E. Mitchell	27	"
H. J. Newmann	222	"
J. G. Pew	4,088	"
T. W. Phillips	200	"
S. Y. Ramage	4,261	"
H. A. Wallace and his children	2,296	"
C. I. Weaver	600	"
Charles H. Munroe, and Thomas R. Weymouth, defendants in this action	816	"
James M. Hutton	9,600	"
	291,747	"

The holdings of these persons amount to twelve per cent plus of the 2,336,826 shares of Columbia Oil outstanding. If Mr. Gossler's stock is eliminated from voting, as it would be under the plan, these holdings total 215,875 or about nine per cent.

[fol. 549] The questionnaire, on which the evidence of the holdings of the persons enumerated above were based, purported to cover only the persons named in Columbia Oil Exhibit 2 and members of their immediate family living with them; no attempt was made to show the holdings of persons, such as close relatives, not living in the same house, friends or business associates, not included in this narrow classification but who might be expected to follow the wishes, advice or example of the persons whose stock holdings were disclosed. I do not imply that it would have been possible to submit data showing such holdings but, the burden being on the proponents of the plan, I am not willing to assume that such persons, who might vote their stock in favor of Columbia Gas rather than Columbia Oil where there was a conflict of interest, do not hold a substantial amount.

There is not included in the tabulation above the stock held in the "Street" names of Coggeshall and Hicks, Gude, Winmill and Company, Jesup and Lamont, or W. E. Hutton and Company, except the stock actually owned by J. F. Hutton though the holdings of these brokers appeared in Columbia Oil Exhibit 2 and Missouri-Kansas argues that on

account of the close connection between these firms and Columbia Gas, it would be reasonable to assume that much of the stock in these names might be voted in the interests of Columbia Gas, which may be true. If such an assumption were accepted, 113,517 shares would be added to the holdings listed above, making a total of 329,392 shares, excluding Mr. Gossler's.

[fol. 550] The Columbia Oil stock was originally distributed by Columbia Gas in 1930 as a dividend to its common stockholders and, at the present time, sixty-eight per cent of the 28,000 odd Columbia Oil stockholders own common stock of Columbia Gas. As no evidence was presented of how many Columbia Oil stockholders own other Columbia Gas securities, either preferred stocks or debentures, I cannot make even a guess as to this.

The percentage necessary to constitute a quorum for meetings of stockholders of Columbia Oil is thirty-three and one-third per cent of the stock outstanding or 778,942 shares, so that 389,472 shares would constitute a majority of a meeting with a quorum present. In dissolution proceedings under the anti-trust law, it has been held that the mere distribution of stock in the competing companies into which the corporation was dissolved, was sufficient to insure the effectiveness of the decree even though the individuals receiving stock in the various companies were identical. However, in this case, if the plan had to depend for its effectiveness on disposal by persons connected with Columbia Gas of their holdings in Columbia Oil, I think that the Gossler holdings, which amount to only three per cent would not be enough and that the Government would be right in its insistence that the United Corporation, Mrs. Clay, the Edwards estate and the other directors of Columbia Gas in addition to Mr. Gossler should divest themselves of their Columbia Oil stock.

I do not decide whether this feature of the plan would be effective if its proponents should be able to meet this [fol. 551] demand of the government, since no such undertaking was included in the plan.

So I conclude that the provision of the plan, which provides for the divestiture of his stock interest in Columbia Oil by Mr. Gossler, cannot be regarded as certain to accomplish the purpose of the consent decree.

III. Termination of the Trust

At present the trust created by the consent decree holds the two classes of preferred stock and the 404,326 shares of common stock of Panhandle Eastern owned by Columbia Oil, and exercises the voting rights of these shares to elect six of Panhandle Eastern's nine directors. Under the plan, the trust will be terminated, all Panhandle Eastern stock returned to Columbia Oil, one class of preferred stock used by that company as a source for raising funds from parties not connected with Columbia Gas in order to reduce its debentures held by Columbia Gas and Columbia Oil will continue to hold the other class of preferred and the common. As to termination of the trust, the Government seems to regard it as having turned out to be unsatisfactory as a method of neutralizing Columbia Gas influence and the plan discards it so no question arises about the necessity of continuing it. As to disposition of $10,000,000 par of Panhandle Eastern A preferred stock to buyers not connected with Columbia Oil as a means for raising money to reduce Columbia Oil's debenture debt to Columbia Gas, the reduction of the debentures will be discussed below. As to the sale of the Panhandle Eastern preferred stock to an outsider, Missouri-Kansas' argument is that Columbia [fol. 552] Oil should have no ties whatever with Panhandle Eastern; certainly anything which diminishes the connection between them is unobjectionable. As to the voting rights of the stock which Columbia Oil will keep, the danger in this situation is intended to be neutralized by the provisions of the plan which deal with the choice of directors and will be considered in that connection.

IV. Exchange of Columbia Oil Preferred Stock for All Its Assets Outside of Its Panhandle Holdings

Columbia Gas is to exchange Columbia Oil's preferred stock, which elects two directors, for substantially all Columbia Oil's assets except its holdings of Panhandle Eastern securities. This exchange seems to be effective as far as it goes, and no criticism has been directed at it in this proceeding.

V. Payment by Columbia Oil on Account of Its Debentures

Columbia Gas now holds $21,000,000 of Columbia Oil's debentures; this amount is to be reduced to $11,000,000 by

a payment to Columbia Gas of $10,000,000, to be raised by Columbia Oil. If, for any reason, Columbia Oil is not able to raise this amount, I assume that the plan will fail as this is an essential feature of it. Columbia Gas is to continue to hold $11,000,000 of Columbia Oil's debentures, and if it were not for other features of the plan, the fact that Columbia Oil owned Columbia Gas this very large amount might subject the former to the latter's influence. However, the veto power over the election of the Columbia Oil direc- [fol. 553] tors to be exercised by the Department of Justice, a feature of the plan discussed below, ought to neutralize this possibility. So I conclude that the continued holding of $11,000,000 of Columbia Oil's debentures by Columbia Gas, when coupled with the provisions against acquisition of Panhandle Eastern securities by Columbia Gas upon default by Columbia Oil and sale of its assets, does not prevent the plan from accomplishing the result intended by the consent decree. Missouri-Kansas seemed to be concerned over what it regarded as a probability that Columbia Oil would not be able to meet the sinking fund requirements of its debentures. The debenture indenture does not absolutely require payment into the sinking fund and it seems to me that its provisions prevent a default if Columbia Oil cannot make the stipulated payments. I must add, however, that I would be better satisfied if the plan could include a provision that Columbia Gas should dispose of those debentures within a specified time.

VI. Resignation of Columbia Oil Officers and Directors, to be Replaced by Persons Approved by the Department of Justice; Adoption of an Amendment by Columbia Oil Stockholders that for Five Years Directors Shall be Approved by that Department

The provisions of this phase of the plan as amended are that, on the entry of the decree, all the officers and directors shall resign and be replaced by persons not objectionable to the Department of Justice; thereafter that an amendment to Columbia Oil's certificate of incorporation shall be adopted by its stockholders dividing the directors into [fol. 554] classes and apparently providing that for five years from the date of the order approving the plan, no person shall be qualified to serve as a director of Columbia Oil who shall not have been approved by the Department of Justice; that the directors of Panhandle Eastern repre-

senting Columbia Oil shall be chosen from the directors of Columbia Oil.

As to the resignation of the Columbia Oil officers and directors, the only objection suggested is that the present incumbents may refuse to resign. No evidence is offered to show that they will not and counsel for the proponents say that they are informed that they will. This imagined obstacle does not seem serious. The other feature of this phase of the plan, that during five years the stockholders may elect as directors only persons approved by the Department, is more difficult.

The choice of the Columbia Oil directors who, in turn, will choose its representatives on the board of Panhandle Eastern is the crucial point of the plan and on it depends whether the plan will effectively accomplish the purpose of the consent decree.

Is approval by the Government of the Columbia Oil directors sufficient to ensure the result intended by the consent decree; if so, is this feature practicable?

As to the first question, it seems to me that the veto power retained by the Department of Justice ought to make it certain that directors in harmony with the recited purpose of the consent decree will be elected; if they are, Columbia Oil ought to be free from the influence of Columbia Gas [fol. 555] and consequently Panhandle Eastern ought to be able to compete freely with Columbia Gas. This whole proceeding has been brought by the Department of Justice, which is a part of the executive branch of the Government, charged with the duty of seeing that the laws, including anti-trust laws, are enforced. I, at least, cannot assume that the Government will allow itself to be hoodwinked or lulled into obliviousness by Columbia Gas, especially while it has Missouri-Kansas to keep it alert and to prod it into activity, even if the latter's description of the anti-trust division of the Department of Justice as "a weary government" is accepted.

So it seems to me that if my interpretation of the plan and the effect of retention of jurisdiction by this court, points to which I shall come, is correct, the continued supervision of the persons to be elected as directors of Columbia Oil to be exercised by the Department of Justice ought to be sufficient to make certain that the plan accomplishes the purpose of the consent decree.

This brings up the last question. Is this feature prac-

ticable, can it be put into operation under the General Corporation Law of Delaware, Columbia Oil being a corporation organized under the laws of that state?

Missouri-Kansas says that it cannot and devoted a large part of its oral argument and its brief to this point. Its arguments can be roughly summarized in this way: The right to vote one's stock as one pleases is an inherent attribute of ownership of stock; the stockholders of Columbia Oil are not parties to this action and the right of each individual stockholder to vote for any director that he wants [fol. 556] to vote for cannot be taken away from him in this proceeding. So each stockholder can vote for a director not approved by the Department of Justice and consequently the whole body of stockholders can do so; therefore, the right of the stockholders of Columbia Oil to choose as their directors whomever they please cannot be affected in this action and the Columbia Oil stockholders can disregard the provision of the plan and the plan which depends on this feature for its effectiveness must fail. Or if this feature of the plan is to be accomplished by amendment of Columbia Oil's certificate of incorporation, it would not be binding even on those assenting to it and certainly not on non-assenters.

As to the first argument, it proceeds on the assumption that the court by its decree will deprive the Columbia Oil stockholders of their right to vote without any consent on their part to such a proceeding. This overlooks the fact that the plan specifically requires consent of the stockholders in the form of adoption of an amendment agreeing to such a limitation on their rights.

As to the second point, it seems to me that this argument overlooks some of the important facts.

The prayer of the supplemental complaint of the government filed in December 1938 was either that Columbia Oil and Columbia Gas be separated from Panhandle Eastern or that Columbia Gas be separated from Columbia Oil, which then might continue its interest in Panhandle Eastern. It must be admitted that the first alternative would be much simpler from a procedural point of view, would [fol. 557] be sure to accomplish the result intended by the consent decree and would be acceptable to the government. Yet the directors of Columbia Oil chose to try to separate Columbia Oil from Columbia Gas rather than to separate Columbia Oil from Panhandle Eastern. It seems to me

that two explanations of their decision are possible. Missouri-Kansas would say that they chose this method with its complicated procedure and what Missouri-Kansas insists is its uncertain result, so that Columbia Gas may continue to influence Panhandle Eastern in the future as it has in the past. The answer to this explanation is that this Court and the Government have the responsibility of deciding now that this outcome is not possible and the means of making certain that it does not, in fact, result. The other explanation, which I assume is correct, is that the Columbia Oil directors realized that the retention of the Panhandle Eastern stock would be a very much more profitable solution for the Columbia Oil stockholders than its disposal and so they chose this method. This is an assumption only, since no testimony was offered as to why this alternative was adopted.

The plan contemplates that the necessary corporate action shall be taken to ensure the carrying out of the plan and it seems to be assumed that this probably requires an amendment of the certificate of incorporation by the inclusion of provisions that for five years only such persons may be elected directors who shall have been approved by the Department of Justice. Pending the adoption of such an amendment, no final decree is to be entered, and of course, if the necessary number of Columbia Oil stockholders refuse to adopt the amendment, the plan fails. So [fol. 558] far there is no difficulty.

But Missouri-Kansas says that even though the majority of the Columbia stockholders adopts the proposed amendment, such action cannot bind the dissenting minority, the assignees of the assenting majority and perhaps is not even binding on the assenting stockholders, themselves, and cites numerous cases supporting its argument. I have looked at these cases and attach to this opinion a brief examination of them and of the cases cited by the proponents.

I do not think that the conclusion of Missouri-Kansas is justified. The majority of the stockholders of a Delaware corporation under the Delaware Corporation Law as construed by the Courts of that state can go very far in binding the minority. Here the choice before the stockholders is whether they will consent to the exercise by the Department of Justice of a veto power over their choice of directors, and by this compliance on their part, enable their

corporation to retain for their benefit its Panhandle Eastern stock, presumably valuable; if they refuse, their company will face a continuation of this litigation with the possibility of being subjected to heavy fines and a decree requiring the immediate disposal of its Panhandle Eastern holdings at no matter what sacrifice.

It must be remembered that the majority would be voting to subject the rights of all stockholders to select directors, including their own, to a veto by the Department of Justice; so far as the record before me discloses, the majority would not be actuated by fraud or any other corrupt motive and would not be seeking to acquire for themselves an advantage [fol. 559] over the non-assenting minority.

Consequently it seems to me that in spite of the general principal that stockholders shall elect their own directors and the provisions of the General Corporation Law of Delaware to this effect, under the circumstances existing here, the majority of the Columbia Oil stockholders ought to be able to take appropriate corporate action to make effective that feature of the plan by which, for five years, Columbia Oil directors, elected by the stockholders, must be approved by the Department of Justice.

If I am wrong in this conclusion and it should be held by the courts of Delaware that the majority of stockholders could not effectively take such action, I interpret the provision of the plan by which jurisdiction is retained to mean that this court will be able to proceed with the case and, if the Government proves its complaint, require Columbia Oil to divest itself of its Panhandle Eastern, and Columbia Gas of its Michigan Gas Transmission, holdings.

VII. Panhandle Eastern's Option to Buy Michigan Gas Transmission Corporation

The only criticism of the features of the plan which provide for an option under which Columbia Oil may buy Michigan Gas and Ohio Gas was directed at the use of the phrase, "actual investment", in describing the price to be paid Columbia Oil if the option were exercised. It seemed to me that the phrase was as good as any other description, short of actually ascertaining the price to be paid in dollars and cents, which could not be done as Columbia Gas' investment [fol. 560] in the property fluctuates from day to day. For this and the other reasons already stated, I did not go into the question. The other provisions of this phase of the plan

seem to me to be fair and reasonably calculated to give Panhandle Eastern an opportunity to acquire the pipe line to Detroit, or if Panhandle Eastern cannot or does not want to, then to make certain that it does not remain in the hands of Columbia Gas.

VIII. Retention of Jurisdiction

The plan provides in substance that jurisdiction should be retained to enforce strict compliance with the decree, to take "*such other action as may be necessary from time to time*" and to require the resignation of any officer or director of Columbia Oil if necessary.

A serious question might be raised as to whether this Court could exercise effective jurisdiction over an absent director or officer of Columbia Oil, not a party to this cause, to compel him to resign if he refused to do so. I interpret the italicized quotation to mean that if any such situation arose, or if, as already suggested, it should be held by the courts of Delaware that the corporate action by Columbia Oil stockholders contemplated by the plan was ineffective, then this Court might proceed to enter any decree against the defendants before it which the facts required, unaffected by the attempt made by an order approving this plan to accomplish the results intended by the consent decree without imposing unnecessary hardship on the defendants. If I am wrong in this interpretation of the mean-[fol. 561] ing and effect of the provision and if the court should believe that possible situations, such as those referred to, should be provided for, then it is respectfully suggested that this part of the plan might perhaps be enlarged.

Respectfully submitted, (Sgd.) William Prickett,
Special Master.

July 29, 1939.

[fol. 562] In United States District Court

Summary of Plan, Findings of Fact, Conclusions of Law and Recommendations by Special Master—Filed July 29, 1939

The Plan Summarized

The present motion and proposed plan depend for their effectiveness on various means which may be roughly summarized as follows:

I. Injunctions prohibiting Columbia Gas and the individual defendants, other than Bay and Hillman, from owning or voting Panhandle Eastern securities and, if Columbia Gas shall sell its investment in Michigan Gas Transmission, any Michigan Gas securities; prohibiting Columbia Gas from owning or voting Columbia Oil securities with the principal exception of $11,000,000 of Columbia Oil debentures; from controlling Columbia Oil, Panhandle Eastern and, if the investment of Columbia Gas in Michigan Gas is disposed of, then from controlling Michigan Gas; prohibiting the same individual defendants from acquiring or voting securities of Columbia Oil in addition to those now owned by them, participating in its management or that of Panhandle Eastern and, if the investment of Columbia Gas in Michigan Gas is disposed of, then from participating in that of Michigan Gas.

II. Sale within five years by P. G. Gossler of his Columbia Oil holdings and an injunction against his voting such stock in the interval until it has been disposed of.

[fol. 563] III. Termination of the trust under which the trustee holds Panhandle Eastern stock for Columbia Oil and transfer of these securities to Columbia Oil.

IV. Surrender by Columbia Gas to Columbia Oil of 400,000 shares of Columbia Oil preferred stock, being all of the issue of that stock, in return for substantially all the assets of Columbia Oil other than its Panhandle Eastern holdings and cash.

V. Reduction by Columbia Oil of its debentures aggregating $21,000,000, held by Columbia Gas, to $11,000,000 by payment by Columbia Oil to Columbia Gas of $10,000,000 to be raised by Columbia Oil through financing with persons having no connection with Columbia Gas; on default on the balance of such debentures remaining outstanding, Columbia Gas shall not acquire control of any Panhandle Eastern securities.

VI. The officers and directors of Columbia Oil shall resign and be replaced by persons not objectionable to the Department of Justice; subject to the necessary authorization by Columbia Oil's stockholders, for five years, di-

rectors, elected by Columbia Oil stockholders, shall be persons acceptable to the Department of Justice.

VII. Panhandle Eastern shall have an option to buy the stock and indebtedness of Michigan Gas and Indiana Gas owned by Columbia Gas, to be exercised within one year from the entry of a final decree in this proceeding, at a price equal to Columbia Gas's actual investment therein, if Panhandle Eastern also buys a pipe line of Ohio Fuel Gas Company in Indiana for $355,191. If, during that [fol. 564] year, Columbia Gas receives from sources, not connected with Columbia Gas, a satisfactory offer to purchase such stock and indebtedness, Columbia Gas will give Panhandle Eastern an opportunity to meet such terms within ninety days. If, within that period, Panhandle Eastern does not meet such offer, Columbia Gas may accept it. If no such sale has been made within the year following the decree, a trustee shall be appointed to make such sale to any purchaser not connected with Columbia Gas for a price not less than Columbia Gas's actual investment therein, unless Columbia Gas consents to a lesser price.

VIII. Jurisdiction of the cause is to be retained by this Court to compel compliance with the decree.

Findings of Fact and Conclusions of Law

I. Columbia Gas and Electric Corporation

Columbia Gas is a large company, holding the stocks of more than fifty operating public utility subsidiaries serving Ohio and Territory east of that state.

A. Capitalization

The capitalization of Columbia Gas is immaterial in this proceeding.

B. Its holdings in corporations involved in this proceeding

(1) In Columbia Oil:

a. $21,000,000 principal amount of debentures, entire outstanding issue, due February 1, 1956.

b. 400,000 shares preferred stock, entire issue; elects minority of board.

[fol. 565] c. No common stock.

(*a*) In Michigan Gas:

a. All of its debt, approximately $6,170,500.

b. 44,800 shares common stock, entire issue, carried on Columbia Gas books at $2,379,500.

(3) In Panhandle Eastern Pipe Line Company:

a. None.

II. Columbia Oil and Gasoline Corporation

This company was formed in 1930 to segregate the oil and gasoline production and distribution properties then owned by Columbia Gas from its public service properties; voting trust certificates for the common stock of Columbia Oil were distributed in that year to Columbia Gas common stockholders on the basis of one share of Columbia Oil for five shares of Columbia Gas held; the voting trust was terminated in 1936 after the consent decree and common stock issued for voting trust certificates as they were turned in.

A. Capitalization:

(1) $21,000,000 principal amount of debentures due February 1, 1956, entire issue held by Columbia Gas.

(2) 400,000 shares of preferred stock, entire issue held by Columbia Gas, electing a minority of Columbia Oil's directors.

(3) 2,336,826 shares of common stock without par value, electing a majority of Columbia Oil's directors.

[fol. 566] B. Holdings in corporations involved in this proceeding:

(1) In Columbia Gas: a. None.

(2) In Panhandle Eastern:

a. 100,000 shares of Class A preferred stock, entire issue, no vote, now in name of Dunn, Trustee.

b. 10,000 shares of Class B preferred stock, entire issue, elects two directors, now in name of Dunn, Trustee.

c. 404,326 shares of common stock out of 728,652 shares outstanding, now in name of Dunn, Trustee; warrants for 80,000 shares are to be distributed to the stockholders of Missouri-Kansas; this company owns the balance of the outstanding common stock, 324,326 shares. Common stock

held by Columbia Oil elects four Panhandle Eastern directors, common stock held by Missouri-Kansas, three.

(3) In Michigan Gas: a. None.

C. Assets:

(1) Five wholly owned subsidiaries engaged in producing, refining and marketing oil and gasoline.

(2) Its Panhandle Eastern holdings.

(3) Cash and unimportant miscellaneous items.

III. Panhandle Eastern Pipe Line Company

A. Capitalization:

(1) $23,012,000 principal amount of bonds in hands of public.

(2) 100,000 shares of Class A preferred stock; no vote, entire issue beneficially owned by Columbia Oil but now in [fol. 567] name of Dunn, Trustee.

(3) 10,000 shares of Class B preferred stock; entire issue; elects two directors; beneficially owned by Columbia Oil; stock now in name of Dunn, trustee.

(4) 728,652 shares of common stock. Warrants representing 80,000 shares of common stock are to be distributed to stockholders of Missouri-Kansas. Columbia Oil owns 404,326 shares of Panhandle Eastern common stock. Missouri-Kansas 324,326 shares. Dunn acting for Columbia Oil elects four, and Missouri-Kansas three, directors.

B. Stock holdings in companies involved:

(1) In Columbia Gas: None.

(2) In Columbia Oil: None.

(3) In Michigan Gas: None.

C. Assets:

The substantial asset of Panhandle Eastern is a pipe line from natural gas fields in Texas and Kansas across those two states, Missouri and Illinois, to the Illinois-Indiana state line.

IV. Michigan Gas Transmission Corporation

A. Capitalization:

(1). Debt, approximately $6,170,500, all owned by Columbia Gas.

(2) 44,800 shares of common stock, all owned by Columbia Gas, carried on its book at approximately $2,379,500.

[fol. 568] B. Holdings in companies involved:

(1) In Columbia Gas and Electric Corporation: None.

(2) In Columbia Oil and Gasoline Corporation: None.

(3) In Panhandle Eastern Pipe Line Company: None.

C. Assets:

Its substantial assets consist of a pipe line from the eastern end of the Missouri-Kansas pipe line at the Illinois-Indiana border and from there across Indiana, Ohio and Michigan to Detroit and another pipe line branching off from this line near Zanesville, Indiana, and running through Indiana about seventy-five miles to a point near Muncie, Indiana, where it connects with lines of the Ohio Fuel Gas Company.

V. Persons, who presumably have interest in or associations with Columbia Gas, who have large holdings in Columbia Oil:

Philip G. Gossler	75,872	shares
Mrs. Gossler	2,385	"
Mrs. Katherine Clay, daughter of Mr. Gossler	30,358	"
United Corporation and its subsidiary, New York United Corporation, which together are the holders of twenty-eight per cent of the common stock of Columbia Gas	84,766	"
The estate of George W. Crawford, a former defendant in this action and a former president and chairman of the board of Columbia Gas	50,799	"
[fol. 569] The estate of E. W. Edwards, the second largest stockholder of Columbia Gas and a director of that company until 1938	25,009	"

Present officers and directors of Columbia Gas:		shares
W. C. Beckjord	400	"
W. W. Freeman	48	"
D. E. Mitchell	27	"
A. J. Newmann	222	"
J. G. Pew	4,088	"
T. W. Phillips	200	"
S. Y. Ramage	4,261	"
H. A. Wallace and his children	2,296	"
C. I. Weaver	600	"
Charles H. Munroe and Thomas R. Weymouth, defendants	816	"
James F. Hutton	9,600	"
	291,747	shares

The holdings of the persons enumerated amount to twelve per cent plus of the 2,336,826 shares of Columbia Oil common stock outstanding. If P. G. Gossler's stock is eliminated, these holdings total 215,875 or about nine per cent.

VI. There is not included in this tabulation, stock, appearing on Columbia Gas Exhibit 2, held in the names of brokerage firms, Coggeshall and Hicks, Gude Winmill and Company, Jesup and Lamont, or W. E. Hutton and Company, totaling 113,517 shares, which Missouri-Kansas argues would be voted for Columbia Gas on account of the [fol. 570] close connection between that company and these brokerage houses.

VII. The Columbia Oil stock was originally distributed by Columbia Gas in 1930 as a dividend to its common stockholders; at present, sixty-eight per cent of Columbia Oil stockholders own common stock of Columbia Gas.

VIII. No evidence was presented as to how many Columbia Oil stockholders own Columbia Gas securities other than Columbia Gas common stock; no evidence was presented as to how much Columbia Oil stock could be controlled or influenced by the persons enumerated in the finding above.

IX. The percentage necessary to constitute a quorum for meetings of stockholders of Columbia Oil is thirty-three and one-third per cent of the stock outstanding or 778,942 shares.

X. Panhandle Eastern should not be dominated or controlled directly or indirectly by Columbia Gas and should be maintained in a position of free and individual action in the production, transmission, sale and distribution of natural gas in competition with others.

XI. The acquisition by Panhandle Eastern of the Michigan Gas pipe line from the Illinois-Indiana border to Detroit, Michigan or the divestiture of its ownership by Columbia Gas is essential to the free and individual action of Panhandle, as stated above.

XII. In view of events before and after the entry of the consent decree in this proceeding, any plan proposed by Columbia Gas and Columbia Oil must be subject to scrutiny.

[fol. 571] XIII. The present consent decree remains unaffected so far as the defendants, Burt R. Bay and John H. Hillman, Jr., defendants in this proceeding, who have not joined in the present motion and proposed plan, are concerned.

XIV. The injunctive provisions of the plan are not, of themselves, sufficient to ensure accomplishment of the purpose of the consent decree.

XV. Disposal within five years by P. G. Gossler of the shares of Columbia Oil held by him to an outside buyer and the prohibition against his voting the shares in the meantime, are not sufficient by themselves to ensure accomplishment of the purpose of the consent decree.

XVI. No finding is made as to whether disposition of their holdings by United Corporation, Mrs. Katherine Clay, the estate of E. W. Edwards and the directors and officers of Columbia Gas, other than Mr. Gossler, would be sufficient to accomplish this result as no such proposal is embodied in the plan.

XVII. The termination of the trust estate set up by the consent decree and the transfer by the trustee to Columbia Oil of the Panhandle Eastern securities held by him under that trust are not obstacles to the accomplishment of the purpose of the consent decree and are proper.

XVIII. The transfer by the Trustee to Columbia Oil of 10,000 shares of Class B preferred stock of Panhandle Eastern and the continued holding thereof by Columbia

Oil, when considered with the other features of the plan, are not obstacles to the accomplishment of the purpose of the consent decree and are proper. . .

[fol. 572] XIX. The transfer by the trustee to Columbia Oil of 100,000 shares of Class A preferred stock of Panhandle Eastern is a proper method of providing Columbia with a source from which it may raise funds to reduce its obligations to Columbia Gas on its debentures and is not an obstacle to the accomplishment of the purpose of the consent decree.

XX. The sale by Columbia Oil of the 100,000 shares of Panhandle Eastern Class A preferred stock, returned to it by the trustee, or the sale of a new issue in lieu thereof, to procure funds for the payment to be made by Columbia Oil to Columbia Gas, hereafter referred to, in either case to a purchaser not connected with Columbia Gas, is not an obstacle to the accomplishment of the purpose of the consent decree and is proper.

XXI. The payment by Columbia Oil to Columbia Gas of $10,000,000 on account of its debentures and the continued holding by Columbia Gas of the balance of $11,000,000 of Columbia Oil debentures, under the conditions provided in the plan, do not present obstacles to the accomplishment of the purpose of the consent decree when the other features of the plan, to which reference will be made, are considered.

XXII. The surrender by Columbia Gas of the entire issue of 400,000 shares of Columbia Oil preferred stock in exchange for substantially all the assets of Columbia Oil other than its Panhandle Eastern holdings and its cash is proper, and in connection with the other provisions of the plan, to which reference will be made, should ensure accomplishment of the purpose of the consent decree.

[fol. 573] XXIII. The resignation of all officers and directors of Columbia Oil upon entry of the final order in this proceeding and the approval of the plan by the Securities and Exchange Commission, to the extent required by law, and the replacement of such officers and directors by persons not objectionable to the Department of Justice and who have no holdings of Columbia Gas securities nor any connection, past or present, with that company, are proper and, in connection with the other provisions of the plan, should

ensure accomplishment of the purpose of the consent decree.

XXIV. The provision in the plan that, if appropriate action to that effect is taken by the stockholders of Columbia Oil, for five years from the entry of an order in this proceeding approving the plan, directors of Columbia Oil shall be limited to persons elected by the stockholders and not objectionable to the Department of Justice, in connection with the other provisions of the plan should ensure accomplishment of the purpose of the consent decree.

XXV. The corporate action by the stockholders of Columbia Oil, a Delaware corporation, to put into effect the provisions of the plan is possible under the laws of the State of Delaware, in view of the purpose of such action and the circumstances as a result of which such action would be taken.

XXVI. Panhandle Eastern's option to buy from Columbia Gas the stock and indebtedness of Michigan Gas and Indiana Gas within one year from the entry of a final decree in this proceeding at a price equal to the actual investment of Columbia Gas therein, is proper. No finding is made as [fol. 574] to what the actual investment of Columbia Gas in these properties is. The limitations on this option, that if Panhandle Eastern exercises it, it shall also buy a pipe line of Ohio Fuel Gas Company in Indiana for $355,191, and that, if, within the option period of one year, an offer for these properties is received from a source not connected with Columbia Oil, then Panhandle Eastern shall have ninety days within which to meet such offer, are reasonable under the circumstances and proper. The further provision that after the expiration of the year during which the option shall continue, if the properties have not been sold, a trustee shall be appointed by this Court to make sale at a price not less than the actual investment of Columbia Gas therein, unless Columbia Gas consents, is proper. Taken all together, these provisions of the plan in conjunction with its other features should ensure accomp-ishment of the purpose of the consent decree.

XXVII. Retention of jurisdiction by this Court would enable it to proceed with this cause and, upon proper showing, grant such relief to the complainant as might be proper, if the necessary corporate action should not be taken by

Columbia Oil, if it should be held by a court, having jurisdiction, that such corporate action was not effective or if other developments prevented the plan from realizing the result intended by the consent decree. If the provisions for retention of jurisdiction are not broad enough to give this Court such power and if the Court would not have such [fol. 575] power without such provisions, if the Court is of the opinion that developments such as those referred to ought to be provided for, the provisions of the plan dealing with this subject should be enlarged.

Recommendations

The undersigned respectfully recommends, if your Honor should conclude that enlargement of the provisions of the plan dealing with retention of jurisdiction is unnecessary, then that your Honor approve the amended plan and upon approval of the Securities & Exchange Commission to the extent required by law and upon the taking of appropriate corporate action by the stockholders of Oil necessary under Section 6 of the Plan as amended, that the motion of Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation referred to in the order of reference dated July 10, 1939 be granted, that the consent decree herein dated January 29, 1936 be modified as provided in that motion and in accordance with the terms of the proposed plan.

Respectfully submitted, (Sgd.) William Prickett,
Special Master.

July 29, 1939.

[fol. 576] IN UNITED STATES DISTRICT COURT

REPORT OF WILLIAM PRICKETT, SPECIAL MASTER—Filed August 5, 1939

The Reference

By an order of this Court dated July 10, 1939, a motion of Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation, two of the defendants in said cause for an order providing that the consent decree entered in this cause January 29, 1936, be modified as in said motion

set forth, and in accordance with the terms of a certain proposed plan set forth in said motion, was referred to me as Special Master.

The Proceedings

On July 14, 1939, that being the earliest date available to the parties, I sat at my office, 404 Equitable Building, Wilmington, Delaware, to take testimony and hear arguments of counsel as provided in the order of reference. Thereafter I proceeded from day to day with such hearings. A transcript of the proceedings at such hearings is handed up herewith.

In the course of the hearings, an amendment to the plan was made by Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation, which is handed up herewith.

Briefs were filed on behalf of the parties and of Missouri-Kansas Pipe Line Company and the City of Detroit, Michigan, amici curiae.

[fol. 577] The hearings concluded with the filing of briefs on July 25, 1939.

Findings of Fact, Conclusions of Law and Recommendations

On July 29, 1939 and within five days of the conclusion of the hearings, as provided in the order of reference, I filed with the Clerk of this Court my Findings of Fact, Conclusions of Law and Recommendations.

Documents Returned Herewith

I hand up to the Court the following:

1. Findings of fact, conclusions of law and recommendations. (See page 562.)
2. Opinion. (See page 544.)
3. Memorandum on cases cited by parties and Missouri-Kansas Pipe Line Company. (Omitted from transcript.)
4. Transcript of testimony. (Omitted from transcript.)
5. Exhibits of Columbia Gas & Electric Corporation. (Omitted from transcript.)
6. Exhibits of Columbia Oil & Gasoline Corporation. (Omitted from transcript.)
7. Amendment to plan filed by Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation. (See page 579.)

8. Brief of Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation. (Omitted from transcript.)

9. Memorandum on behalf of Columbia Oil & Gas Corporation and Columbia Gas & Electric Corporation and Missouri-Kansas Pipe Line Company. (Omitted from transcript.)

10. Brief of Missouri-Kansas Pipe Line Company, amici curiae (Omitted from transcript.)

11. Brief of City of Detroit. (Omitted from transcript.)

[fol. 578] 12. Reply brief of Missouri-Kansas Pipe Line Company. (Omitted from transcript.)

13. Telegram from United States of America. (Omitted from transcript.)

Respectfully submitted. (Sgd.) William Prickett, Special Master.

July 29, 1939.

[fol. 579] IN UNITED STATES DISTRICT COURT

AMENDMENT TO PLAN FILED BY COLUMBIA GAS & ELECTRIC CORPORATION AND COLUMBIA OIL & GASOLINE CORPORATION WITH WILLIAM PRICKETT, ESQ., SPECIAL MASTER

Without objection by the plaintiff, the defendants amend the proposed Plan as follows:

(1) There shall be stricken out the last subparagraph of paragraph 6 of the proposed Plan, to-wit:

"The number of directors of Columbia Oil shall be no larger than the number of directors to which Columbia Oil may be entitled upon the board of Panhandle Eastern, and the directors of Columbia Oil shall be designated by Columbia Oil as its representatives upon the board of directors of Panhandle Eastern."

and in lieu thereof the following paragraphs shall be substituted:

"The representatives of Columbia Oil on the Board of Directors of Panhandle Eastern shall be directors of Columbia Oil.

As early as practicable after the entry of the final order approving the Plan, the directors of Panhandle Eastern,

who now represent Columbia Oil, shall resign and be succeeded by persons who shall have been elected as directors of Columbia Oil under this Plan.

Columbia Oil will, subject to the necessary authorization by its stockholders, amend its Articles of Incorporation or take such other appropriate action as may be required by law to divide its Board of Directors into three classes, the term of office of the first class to expire at the annual meeting next ensuing after such classification, the term of office of the second class one year thereafter, and the term of office of the third class two years thereafter. Of the directors initially to be chosen under the Plan, the maximum number permissible by law shall be elected for the longest term.

[fol. 580] For a period of five years from the date of the entry of the order approving the Plan no person shall be qualified to be elected and serve as a director of Columbia Oil who shall be objectionable to the Department of Justice."

(2) Paragraph 9 of the proposed Plan shall be amended so that as amended it shall read as follows:

"9. The carrying out of the Plan shall be contingent upon the approval to the extent required by law of the Securities and Exchange Commission, and necessary and appropriate corporate action by the stockholders of Columbia Oil."

(Sgd.) Wm. S. Potter, Ward & Gray. (Sgd.) Cravath, deGersdorff, Swaine & Wood, Attorneys for Defendants, Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr. (Sgd.) Daniel O. Hastings. (Sgd.) William H. Button. (Sgd.) Auchincloss, Alley & Duncan, Attorney for Defendants, Columbia Oil & Gas Corporation, and Charles A. Munroe. (Sgd.) Thomas J. Lynch, Special Assistant to the Attorney General. (Sgd.) Morris R. Clark, Special Assistant to the Attorney General.

[fol. 581] IN UNITED STATES DISTRICT COURT

OBJECTIONS OF COLUMBIA OIL TO THE REPORT OF WILLIAM PRICKETT, ESQ., SPECIAL MASTER—Filed August 7, 1939

Columbia Oil & Gasoline Corporation (hereinafter referred to as Columbia Oil), one of the defendants in the above-entitled action, hereby enters its objections to the Report of William Prickett, Esq., Special Master, appointed by this Court on July 10, 1939, to consider, take testimony, hear arguments of counsel, and make report to this Court of his findings of fact, conclusions of law and recommendations concerning a certain motion of Columbia Oil and Columbia Gas and Electric Corporation (hereinafter referred to as Columbia Gas) filed in this Court on June 20, 1939. Columbia Oil makes the following objections.

Objections to the Findings of Fact and Conclusions of Law of the Special Master

Finding No. XXIV. Columbia Oil has no objection to this finding except to the implication therein that the arrangement in regard to the approval of the Department of Justice of the Directors chosen can be insured only by action of the stockholders of the Columbia Oil. We submit that the same object can be accomplished by the order of this Court.

Objection to the Opinion

Pages 4 and 5 of the Opinion. Columbia Oil objects to the statement in said Opinion of the Special Master referred to which indicates that despite the Consent Decree, domination of the Panhandle Eastern was continued by Columbia Gas. Our objection to this statement is that it [fol. 582] is not within the issues submitted to the Special Master, that there was no evidence produced in regard thereto, and that it is a conclusion that from the first has been denied by this defendant and this defendant contends that the injunctions included in the Consent Decree herein were ample to eliminate any control of Columbia Gas over the operations of the Panhandle Eastern Company.

Columbia Oil objects to the conclusions in paragraph V, page 13, et seq., of the Opinion of the Special Master. This defendant objects to the conclusion that the payment of any amount of the indebtedness by it to Columbia Gas

is an essential part of the plan. This objection is based on the contention that such issue was not referred to the Special Master and that no testimony to the effect that such payments were essential to make the plan effective was presented to him.

Respectfully submitted, (Sgd.) Daniel O. Hastings,
Attorney for Columbia Oil & Gasoline Corporation.

[fol. 583] IN UNITED STATES DISTRICT COURT

OBJECTIONS OF COLUMBIA GAS TO THE REPORT OF WILLIAM PRICKETT, ESQ., SPECIAL MASTER—Filed August 7, 1939

Columbia Gas & Electric Corporation (hereinafter referred to as Columbia Gas), one of the defendants in the above-entitled action, hereby enters its objections to the Report of William Prickett, Esq., Special Master, appointed by this Court on July 10, 1939, to consider, take testimony, hear arguments of counsel, and make report to this Court of his findings of fact, conclusions of law and recommendations concerning a certain motion of Columbia Gas and Columbia Oil and Gasoline Corporation (hereinafter referred to as Columbia Oil) filed in this Court on June 20, 1939. Columbia Gas does not object to the recommendation of the Master that the motion of Columbia Gas and Columbia Oil be granted but only to the following matters stated in his findings of fact and in his opinion filed in the Court on July 29, the same being as follows:

Objections to the Findings of Fact and Conclusions of Law

1. Finding No. V. Columbia Gas objects to the statement that Philip G. Gossler holds 75,872 shares of common stock of Columbia Oil and it states the correct figure is 65,872. The Master has apparently taken the figure of Mr. Gossler's holdings as it existed at June 20, 1939 (Columbia Gas Exhibit No. 3), whereas after that date and before the hearing Mr. Gossler sold 10,000 shares, so that on July [fol. 584] 6, 1939, his holdings had been reduced to 65,872 shares (Columbia Gas Exhibit No. 2).

2. Finding No. V. Columbia Gas objects to the statement that the United Corporation and its subsidiary, New York United Corporation, together are the holders of twenty-

eight per cent (28%) of the common stock of Columbia Gas and it states that the correct figure is just under twenty per cent (20%). This appears from the testimony of Mr. Reynolds (Rec. p. 65) and also from Columbia Gas Exhibit No. 9.

3. Finding No. V. Columbia Gas objects to the statement that the estate of E. W. Edwards is the second largest stockholder of Columbia Gas, and states that Mr. E. W. Edwards who was a director of the Company until 1938 is still alive and that there is nothing in the record to support the statement that he is the second largest stockholder of Columbia Gas. It is not known to Columbia Gas whether or not he is the second largest stockholder.

4. Finding No. VI. Columbia Gas objects to the statement that there is a close connection existing between it and the firms of Coggeshall and Hicks, Gude, Winmill & Company, Jessup and Lamont and W. E. Hutton & Company, and states that there is nothing in the record to justify this statement other than the fact that Murray Coggeshall, of the firm of Coggeshall and Hicks, is a director of Columbia Gas and that James Hutton, of W. E. Hutton & Co., was formerly a director of Columbia Gas, and states [fol. 585] that there is no close connection. If the Master merely intended to state that the Missouri-Kansas argues that there is such a close connection, his language would not be objectionable, but in that case his language should be rephrased to so indicate, for at present it appears to have the effect of a finding.

5. Finding No. VII. Columbia Gas objects to the statement that "at present sixty-eight per cent of Columbia Oil stockholders own common stock of Columbia Gas" and states that the correct statement should be either that (1) "as of the latest dates submitted as readily available (December 20, 1938 in the case of Columbia Oil and February 6, 1939, in the case of Columbia Gas) almost sixty-eight per cent of Columbia Oil common stock was owned by persons also owning common stock of Columbia Gas" or (2) that "as of the latest dates submitted as readily available (December 20, 1938, in the case of Columbia Oil and February 6, 1939, in the case of Columbia Gas) sixty-one and a fraction per cent of Columbia Oil stockholders owned common stock of Columbia Gas". This appears from Co-

lumbia Gas Exhibit No. 9. The statement in the findings above quoted is apparently a miscalculation, because, as will appear from the exhibit referred to, considerably less than sixty-eight per cent of Columbia Oil common stockholders owned common stock of Columbia Gas.

6. Finding No. XI. Columbia Gas objects to the finding that:

"XI. The acquisition by Panhandle Eastern of the Michigan Gas pipe line from the Illinois-Indiana border to Detroit, Michigan or the divestiture of its ownership by Columbia Gas is essential to the free and individual action of Panhandle, as stated above."

[fol. 586] Columbia Gas does not admit the correctness of this finding but on the contrary denies it and asks that it be omitted for the reason that (1) this was not within the scope of the issues before the Master, inasmuch as the Government's Supplemental Complaint of December, 1938, did not ask for any relief with regard to the Michigan Gas pipe line or even mention the same, and the issues referred by the Court to the Master were limited to the issues raised by that Supplemental Complaint; and also for the reason that (2) the record does not contain any testimony on the question whether it is necessary that Panhandle Eastern acquire the Michigan Gas pipe line, since no testimony was offered or believed to be pertinent by Columbia Gas on a subject that was outside of the scope of the issues referred to the Master.

Objections to the Opinion

1. Page 4, section of Opinion headed "Injunctions". Columbia Gas objects to the following two sentences (here italicized) occurring in the second paragraph of this opinion:

"The consent decree also contained elaborate injunctive provisions, forbidding the defendants from exercising any domination or control over Panhandle Eastern. *In spite of these provisions, however, this influence and control has apparently persisted, resulting in the renewed complaints of the Government. So I conclude that the injunctions alone were not, and will not, be effective to prevent the abuses complained of.*"

Columbia Gas objects to this because, as this stands, it is a statement of a matter not within the scope of the issues referred to the Master by the Court and also because it is a matter on which no evidence was offered. The objections are, in brief, of the same nature as those made with respect to Finding of Fact No. XI above, relative to the [fol. 587] necessity of the acquisition of the Michigan Gas Pipe Line by Panhandle Eastern. Columbia Gas also does not admit the correctness of the statement quoted but on the contrary denies it.

2. Pages 6 and 7: Section of Opinion headed "Disposition of Gossler Stock". Columbia Gas raises the same objections, which it raised to Finding of Fact No. V, with respect to (a) the statement that Gossler's holdings of Columbia Oil common stock amount to 75,872 shares and (b) that the holdings of the United Corporation and its subsidiary in Columbia Gas are 28% thereof and (c) that the estate of E. W. Edwards is the second largest stockholder of Columbia Gas. The reasons for the objection are the same as those expressed in the objection to Finding of Fact No. V.

3. Page 8: Section of Opinion headed "Disposition of Gossler Stock". Columbia Gas objects to the statement in the last paragraph on this page where it speaks of a "close connection" existing between Columbia Gas and the firms of Coggeshall and Hicks, Gude, Winmill & Company, Jessup and Lamont and W. E. Hutton & Company, for the same reasons that it has set forth in its objection to Finding of Fact No. VI above.

4. Page 9: Section of Opinion headed "Disposition of Gossler Stock". Columbia Gas objects to the statement that "at the present time sixty-eight per cent of the 28,000 odd Columbia Oil stockholders own common stock of Columbia Gas", for the reason given to Finding of Fact No. VII above, and states that a correct statement would be as [fol. 588] set forth in the objection to that Finding.

5. Page 13: Section of Opinion headed "Payment by Columbia Oil On Account of Its Debentures". Columbia Gas objects to the second sentence of this section of the Opinion, which is here italicized:

"Columbia Gas now holds $21,000,000 of Columbia Oil's debentures; this amount is to be reduced to $11,000,000

by a payment to Columbia Gas of $10,000,000, to be raised by Columbia Oil. *If, for any reason, Columbia Oil is not able to raise this amount, I assume that the plan will fail as this is an essential feature of it.* * * * "

Columbia Gas calls attention to the provision of the Plan (paragraph 5 (a) thereof) which requires Columbia Oil to use its best efforts to raise the $10,000,000 referred to in one of the several ways described in the plan. The above-quoted sentence from the opinion is consequently not an accurate restatement of this provision.

Respectfully submitted, (Sgd.) Wm. S. Potter, Ward & Gray. (Sgd.) Cravath, deGersdorff, Swaine & Wood, Attorneys for Columbia Gas & Electric Corporation.

[fol. 589] IN UNITED STATES DISTRICT COURT

EXCEPTIONS OF UNITED STATES OF AMERICA TO REPORT OF WILLIAM PRICKETT, ESQUIRE, SPECIAL MASTER—Filed August 7, 1939

Now comes plaintiff United States of America, by its attorneys Thomas J. Lynch and Morris R. Clark, Special Assistants to the Attorney General, and respectfully excepts and objects to the report of the Special Master herein filed July 29, 1939, in the following respects:

(1) Plaintiff excepts to the failure of the Special Master to find that, in order to ensure the accomplishment of the purpose of the consent decree entered January 29, 1936, it is necessary and essential, in addition to carrying out all other provisions of the amended Plan, that the several blocks of common stock of Columbia Oil & Gasoline Corporation referred to in paragraphs XV and XVI of the Master's Findings of Fact and Conclusions of Law be disposed of by the present holders thereof to other persons having no direct or indirect interest in or connection with Columbia Gas & Electric Corporation, on or before the entry of any final order approving the amended Plan and granting defendants' motion.

(2) Plaintiff excepts to the recommendation of the Special Master that the court approve the amended Plan and grant said motion, and to the failure of the Special Master

to recommend that such Plan be disapproved and said [fol. 590] motion be denied unless and until (in addition to carrying out all other provisions of the amended Plan) the several blocks of common stock of Columbia Oil & Gasoline Corporation referred to in paragraphs XV and XVI of the Master's Findings of Fact and Conclusions of Law be disposed of by the present holders thereof to other persons having no direct or indirect interest in or connection with Columbia Gas & Electric Corporation.

(Sgd.) T. J. Lynch, Special Assistant to the Attorney General. (Sgd.) Morris R. Clark, Special Assistant to the Attorney General.

[fol. 591] IN UNITED STATES DISTRICT COURT

OBJECTIONS OF MISSOURI-KANSAS PIPE LINE COMPANY TO REPORT OF SPECIAL MASTER—Filed August 8, 1939

Now comes Missouri-Kansas Pipe Line Company, by its solicitor, and respectfully excepts and objects to the Report of the Special Master herein, filed July 29, 1939, in the following respects:

1. To the finding and recommendation that the motion referred to in the order of reference ought to be granted and the Consent Decree modified as provided in said motion and in accordance with the terms of the proposed Plan.

2. To the failure of the Special Master to find that a continuance of the stock holdings mentioned in Findings XV and XVI prevent the Plan from accomplishing the purpose of the Consent Decree.

3. To the failure of the Special Master to include in Finding V the holding of the defendant Charles A. Munroe and William P. Philips as Voting Trustees of 70,584 shares.

4. To the failure of the Special Master to include in Finding numbered V the holdings in the name of brokerage firms set forth in Finding VI.

5. To the failure of the Special Master to require evidence as to the matters set forth in Finding numbered VIII and to his approval of the Plan without such evidence.

6. To the holding of the Special Master in Findings numbered XVII, XVIII, XIX, XX and XXI, that the various matters therein set forth respectively are not obstacles to the accomplishment of the purpose of the Consent Decree [fol. 592] and are proper.

7. To the Finding numbered XXII that the surrender by Columbia Gas of certain Columbia Oil stock in exchange for other assets of Columbia Oil is proper, and should in connection with other provisions of the Plan insure accomplishment of the purpose of the Consent Decree.

8. To the Finding numbered XXIII to the effect that replacement of certain officers and directors of Columbia Oil should insure accomplishment of the purpose of the Consent Decree.

9. To the Finding numbered XXIV that the provision in the Plan that for five years directors of Columbia Oil shall be limited to persons not objectionable to the Department of Justice should in connection with the other provisions of the Plan insure accomplishment of the purpose of the Consent Decree.

10. To the Finding numbered XXV that corporate action by the stockholders of Columbia Oil to put into effect the provision referred to in Finding numbered XXIV is possible under the laws of the State of Delaware.

11. To the failure of the Special Master to take evidence and make a finding as to the actual investment of Columbia Gas in the Michigan Gas and Indiana Gas properties as stated in Finding numbered XXVI.

12. To the finding by the Special Master that the proposed Plan and motion result in an effective divestiture by Columbia Gas of "all control, direct or indirect, legal or practical, of Panhandle Eastern", as required by the Consent Decree.

[fol. 593] 13. To the failure of the Special Master to receive or take evidence or make a finding as to the fairness of the exchange of 400,000 shares of Columbia Oil preferred stock held by Columbia Gas for the securities and indebtedness held by Columbia Oil in five of its subsidiary companies.

14. To the failure of the Special Master to take evidence or make a finding as to the identity and connections of the syndicate which the evidence showed had been formed to purchase and was already engaged in purchasing certain large blocks of Columbia Oil common stock.

15. To the failure of the Special Master to recommend denial of the motion and disapprove of the Plan upon the ground that the same makes no provision against control by Columbia Gas after the expiration of five years.

Respectfully submitted, (Sgd.) Martin G. Hannigan,
Solicitor for Missouri-Kansas Pipe Line Company.

[fol. 594] IN UNITED STATES DISTRICT COURT

OBJECTIONS OF THE CITY OF DETROIT AS AMICUS CURIAE TO THE REPORT OF THE SPECIAL MASTER—Filed August 12, 1939

Now comes the City of Detroit by Raymond J. Kelly, Corporation Counsel, appearing herein as amicus curiae under and by virtue of an order of this Court dated June 20, 1939, and objects to the report of William Prickett, Esq., Special Master, appointed by this Court on July 10, 1939, to consider, take testimony, hear arguments of counsel and make report of his findings of fact, conclusions of law and recommendation concerning the motion of Columbia Gas and Columbia Oil filed in this Court on June 20, 1939, which report of said Special Master was filed herein on July 29, 1939, the objections of the City of Detroit being as follows:

1. Because of the recommendations of the Special Master that the Court approve the amended plan and grant said motion.

2. Because of the failure of the Special Master to recommend that such plan be disapproved for the reason that said Special Master found, on page 19 of his opinion, that it must be admitted that the separation of Columbia Gas and Columbia Oil from Panhandle Eastern would be much simpler from a procedural point of view, would be sure to accomplish the result intended by the consent decree and would be acceptable to the Government. The City of De-

troit feels that if in the opinion of the Special Master there is a more simple and certain way to accomplish the results sought in this action, that the Special Master should dis- [fol. 595] approve of the proposed plan for this reason alone.

3. Because of the recommendations in the report of the Special Master, as well as the concluding paragraph of his opinion, reveal the obstacles, legal and otherwise, to the consummation of the proposed plan, including the possibility of this Court being unable to exercise effective jurisdiction over an absent director or officer of Columbia Oil, not a party to this cause, to compel him to resign if he refused to do so, and the possibility that the Courts of Delaware might hold that corporate action contemplated by the plan was ineffective.

4. Because it is the duty of this Court to accomplish the results here sought in the most effective way possible and where the Special Master's findings reveal a more simple, effective and certain way of accomplishing these results, the recommendations should have been for disapproval of the proposed plan because of its uncertainty, its possible ineffectiveness and the better plan suggested or recommended in the interests of justice.

5. Because it is apparent that the ends sought by the Government's action can be best accomplished by the divestiture of Columbia Oil of their interest in and domination over Panhandle Eastern and by the divestiture of Columbia Gas from their ownership and control over Michigan gas.

Respectfully submitted, (Sgd.) Raymond J. Kelly, Corporation Counsel of the City of Detroit, Appearing as Amicus Curiae, 301 City Hall, Detroit, Michigan.

Dated: August 10, 1939.

[fol. 596] IN UNITED STATES DISTRICT COURT

PETITION OF MISSOURI-KANSAS PIPE LINE COMPANY FOR POSTPONEMENT OF HEARING ON EXCEPTIONS TO REPORT OF WILLIAM PRICKETT, ESQUIRE, SPECIAL MASTER—Filed November 1, 1939

The petition of Missouri-Kansas Pipe Line Company respectfully shows to this court and alleges:

1. Petitioner, Missouri-Kansas Pipe Line Company (hereinafter referred to as "Mokan"), is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

2. On March 6, 1935, United States of America commenced this suit in equity against the above-named defendants by filing a petition herein alleging that the said defendants had entered into a conspiracy to violate and had violated the anti-trust laws of the United States; said petition was thereafter amended and supplemented on October 30, 1935, at which time the allegations of the United States as to the violation of the anti-trust laws by the defendants herein was substantially broadened and made more specific by the detailed allegation of various acts and practices.

3. The suit brought by the Government was predicated upon alleged unlawful restraints of divers sorts imposed upon Panhandle Eastern Pipe Line Company (hereinafter called "Panhandle Eastern") by the defendants herein.

4. Subsequently and on January 29, 1936, pursuant to a consenting stipulation, a decree of this court was duly made and entered against all of the defendants. Reference is made to said decree and stipulation as if herein fully and [fol. 597] at length set forth.

5. The decree above referred to provided among other things for the appointment of Gano Dunn as trustee for the purposes set forth in the decree, his trusteeship to continue until such time as it should terminate with the approval of this court:

"* * * when (1) Columbia Gas has effectively divested itself of all control, direct or indirect, legal or practical, of Panhandle Eastern by (a) no longer owning stock of any class having present or potential voting rights in

Columbia Oil or (b) by Columbia Oil divesting itself of ownership of all stock of Panhandle Eastern; or when (2) under the circumstances then existing, the continuance of said trust is no longer essential or necessary in carrying out the purposes of this decree; * * *"

6. Since the entry of the said decree and up to the present time said trusteeship has continued.

7. On December 21, 1938, United States filed its motion for leave to serve a further supplemental complaint, which supplemental complaint was filed January 12, 1939.

8. On February 6, 1939, a motion and petition for leave to intervene was filed by the petitioner herein, Mokan, and on March 29, 1939, the opinion of this court denying Mokan leave to intervene was filed; the order of this court denying intervention being filed March 30, 1939.

9. On May 15, 1939, United States filed its motion for leave to withdraw its supplemental complaint; its motion to vacate the decree of January 29, 1936, and its further amended and supplemental complaint.

[fol. 598] 10. On June 20, 1939 a motion and plan of the defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation were filed herein. The plan filed by said defendant corporations proposed, among other things, a modification of the consent decree of January 29, 1936; various readjustments of intercorporate relationships, all to the alleged effect of a divestiture by Columbia Gas & Electric Corporation of any class of the stock of Columbia Oil & Gasoline Corporation having present or potential voting rights in the latter corporation, said plan being put forward apparently with a view to securing the termination of the trust created by this court under the decree of January 29, 1936 by means of a seeming compliance with the second alternative provided in that decree before the termination of said trust would be approved.

11. On July 5, 1939 Mokan filed its second motion and petition for leave to intervene.

12. On July 10, 1939 an order of the Court denying this second motion to intervene was entered and filed and on the same day by order of the court the plan proposed by

the defendant corporations was referred to the Honorable William Prickett, as Special Master.

13. A notice of appeal from the order entered March 30, 1939 denying Mokan's first petition to intervene, was filed on June 26, 1939 and a further notice of appeal, from the order of July 10, 1939 denying Mokan's second motion and petition to intervene, was filed July 14, 1939.

[fol. 599] 14. Mokan has duly prosecuted its appeals from the orders above referred to in the United States Circuit Court of Appeals for the Third Judicial Circuit, by procuring the record in this case to be certified to that court by the Clerk of this court; by duly printing, filing and serving said record and by preparation, filing and serving of its brief.

15. The argument on the Mokan appeals in said Circuit Court of Appeals for the Third Judicial Circuit has been set down for Tuesday, November 7, 1939.

16. The sole issue before the United States Circuit Court of Appeals for the Third Judicial Circuit is whether Mokan, the petitioner herein, should be permitted to intervene in this cause as previously moved and prayed in the motions and petitions hereinabove referred to.

17. A hearing has been set, and notice thereof given, before the United States District Court for the District of Delaware for the purpose of hearing the pending exceptions filed in this cause to the report of William Prickett, Esq., Special Master, in order to determine whether the report of said Special Master should be confirmed.

18. A stay of further proceedings herein until a determination of the Mokan appeals will not prejudice the rights of the parties to this cause.

Wherefore, petitioner prays:

[fol. 600] 1. that this Honorable Court by appropriate order stay and enjoin any further proceedings before it in respect to this cause or in respect to the presentation of the plan proposed by the corporate defendants herein for the approval of this court until such time as petitioner's appeals referred to herein can be heard and determined by the United States Circuit Court of Appeals for the Third Judicial Circuit;

2. that such other and further relief be granted petitioner as to this Honorable Court may seem just and equitable.

And petitioner will ever pray, etc.

Missouri-Kansas Pipe Line Company, by (Sgd.) W. C. Tringham, Treasurer, Petitioner. By (Sgd.) Martin G Hannigan, Solicitor for Petitioner. (Corporate Seal.)

[fol. 601] *Duly sworn to by William C. Tringham. Jurat omitted in printing.*

[fol. 602] IN UNITED STATES DISTRICT COURT

ORDER POSTPONING HEARING ON EXCEPTIONS TO REPORT OF WILLIAM PRICKETT, ESQUIRE, SPECIAL MASTER—Filed November 1, 1939

And now, to wit, this 1st day of November, A. D. 1939, upon reading and considering the petition of Missouri-Kansas Pipe Line Company this day filed in the above entitled cause, after hearing counsel for the respective parties, upon consideration thereof,

It Is Ordered by the Court that the hearing on the pending exceptions to the report of William Prickett, Esq., Special Master, with respect to the plan proposed by said Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, defendants, for a modification of the consent decree entered in this cause January 29, 1936, be and hereby is postponed until a day to be hereafter fixed subsequent to the hearing by the United States Circuit Court of Appeals for the Third Circuit on November 7, 1939, of the appeals taken by Missouri-Kansas Pipe Line Company from the orders of this court entered March 30, 1939 and July 10, 1939, denying motions and petitions of said Missouri-Kansas Pipe Line Company for leave to intervene in this cause.

(Sgd.) John P. Nields, J.

[fol. 603] IN UNITED STATES DISTRICT COURT

APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY FOR RELIEF TO WHICH SAID COMPANY IS ENTITLED UNDER SECTIONS IV AND V OF THE DECREE FILED HEREIN JANUARY 29, 1936—Filed March 23, 1940

Panhandle Eastern Pipe Line Company, making this application for relief to which it is entitled under Sections IV and V of the Decree filed herein January 29, 1936, respectfully shows to this Court and alleges:

I. Panhandle Eastern Pipe Line Company above mentioned (hereinafter called "Panhandle Eastern") at all times hereinafter mentioned was and now is a corporation organized and existing under the laws of Delaware and is referred to in the Decree filed herein January 29, 1936.

Michigan Gas Transmission Corporation hereinafter mentioned (hereinafter called "Michigan Gas") since on or about January 31, 1936 has been and now is a corporation organized and existing under the laws of Delaware.

Columbia Gas & Electric Corporation, one of the defendants herein (hereinafter sometimes called Columbia Gas) at all times hereinafter mentioned was and now is a corporation organized and existing under the laws of the State of Delaware.

Columbia Oil & Gasoline Corporation, one of the defendants herein (hereinafter sometimes called Columbia Oil) at all times hereinafter mentioned was and now is a corporation organized and existing under the Laws of the State of Delaware.

II On March 6, 1935, the above named plaintiff, United States of America (hereinafter called "United States"), commenced this suit in equity against the defendants herein [fol. 604] by filing a Petition herein, alleging generally that the said defendants had entered into a conspiracy to violate and had violated the Anti-Trust Laws of the United States.

III. Thereafter on October 30, 1935, United States filed an Amended and Supplemental Petition (hereinafter called "Amended Petition"), reference to which is hereby made as if herein fully and at length set forth.

IV. Thereafter on January 29, 1936, a stipulation was duly entered into between United States and the defendants

herein consenting to the entry of a Decree against said defendants, and on said day a Decree, to which was attached as a part thereof the aforesaid stipulation, was duly made and entered in this Court against all of the defendants herein, reference to which stipulation and Decree is hereby made as if herein fully and at length set forth.

V. Said decree provides among other things as follows:

"Section V. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

VI. Section IV of said Decree is as follows (italicizing ours):

[fol. 605] "That the defendants be and they are hereby *perpetually enjoined* from restraining or interfering in any manner in the freedom of Panhandle Eastern to contract or to finance or arrange the financing of all contracts, extensions (including the proposed new line to Detroit, whether or not built and owned by it), repairs, maintenance, service, or improvements necessary in its business through or with any firm, person, or corporation with whom it may choose to deal (and to that end any such financial or contractual arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter);

"That if such contracts be made with or financial assistance be secured from Columbia Gas, such contracts may be made or financial assistance furnished only upon terms or conditions which do not in *any* way, directly or *indirectly*, presently or *potentially*, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as

security for the investment; and in the event that Columbia Gas shall, with respect to any contract or any contractual rights of any kind whatsoever or any property held as security or used in connection with any contract, *if any* way prevent the *free* transportation, sale, and distribution of gas by Panhandle Eastern, then upon application to this Court or any Court of competent jurisdiction Panhandle Eastern shall have the right (1) to the *immediate appointment of a trustee to hold such contract rights or Property* subject to the purposes and provisions of this decree; (2) to immediate *specific* performance of *any* and *all* contracts with Columbia Gas; and (3) to *immediate* injunction, both temporary and final, as well as any other appropriate remedy at law or in equity, including any remedy hereunder."

VII. Prior to the making and entry of the aforesaid Decree, Panhandle Eastern, which was then completely [fol. 606] under the control of the defendants herein, had entered into a contract or agreement with The Detroit City Gas Company, hereinafter sometimes referred to as the Detroit Contract, by the terms of which Panhandle Eastern had agreed to supply natural gas to the City of Detroit, Michigan, for a period of 15 years, which contract is the same contract mentioned and described in said Section IV of the Decree herein.

VIII. At the time the said Detroit Contract was entered into, as well as at the time the said Decree was made and entered herein, the eastern terminus of the Panhandle Eastern natural gas pipe line was at a point called Dana, in the State of Indiana, situated near the Illinois-Indiana state boundary line, which point is indicated on a map annexed hereto, made a part hereof and marked "Exhibit A". At said times there was no pipe line connection between the said eastern terminus of the Panhandle Eastern Pipe Line at Dana, Indiana, and the City of Detroit, Michigan, a distance of more than three hundred miles. Said map shows the Panhandle Eastern pipe line and the Columbia System as they existed prior to the commencement of this suit.

IX. The said Detroit Contract contained, among other things, provision for (a) the construction by Panhandle Eastern of a pipe line extension from the eastern terminus of the then existing Panhandle Eastern pipe line to the

City of Detroit, Michigan (hereinafter sometimes referred to as the "Detroit extension"), (b) the reinforcement of the existing pipe line, and (c) the financing of said construction and reinforcement, in terms and words [fol. 607] as follows:

"Inasmuch as the carrying out of this Agreement depends upon the construction of a pipe line connecting the eastern terminus of Seller's existing pipe line at the Illinois-Indiana state line with the City of Detroit, as well as on the reinforcement of the present pipe line of Seller, since the present line of Seller is inadequate to deliver the quantity of gas called for by this Agreement without reinforcements requiring the expenditure of a large sum of money, and Seller represents that its financial position is such that it cannot construct either said connecting line or said reinforcements without outside financing, it is expressly understood and agreed that, unless the construction of such connecting line shall have been financed on or before February 1, 1936, and unless a contract shall be entered into providing for the financing of said reinforcement of Seller's present pipe line before said date, this Agreement shall be null and void and no obligations hereunder shall exist on the part of either party hereto. Seller agrees to use its best efforts to arrange for financing the construction of such connecting pipe line and such reinforcement of its present pipe line, but does not undertake any firm commitment to do so. If such financing shall be arranged by said date, Seller will construct and place said connecting pipe line in condition for operation on or before the Date of Initial Delivery."

X. Because of the existence of said contract, and contemplating the construction of said extension, said Decree filed herein January 29, 1936 (paragraph IV) provided for alternate methods of financing, and further provided that if the Detroit extension and the necessary reinforcements to the main line of Panhandle Eastern were constructed with financial assistance secured from Columbia Gas, such

"financial assistance (must be) furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any [fol. 608] voting rights, control or participation in the management of Panhandle Eastern or confer any rights of

ownership in the works or properties of Panhandle Eastern except as security for the investment;"

XI. Notwithstanding said Decree and the further provision therein contained that the defendants were perpetually enjoined from acquiring, directly or indirectly, the whole or any part of the property or assets of Panhandle Eastern, two days after the entry of said Decree, namely, on January 31, 1936, Defendant Columbia Gas, for its own benefit and use, directly acquired from Panhandle Eastern that part of the contract under which Panhandle Eastern owned the right to construct, own and operate the extension from the eastern terminus of the Panhandle Eastern line to the City of Detroit, and by means of its complete control of the Board of Directors of Panhandle Eastern caused the necessary corporate action to be taken to permit such acquisition. Said corporate action was taken before Gano Dunn, Trustee appointed by and under said Decree herein, had qualified and taken office and was taken at directors' meetings superintended by Charles A. Munroe, one of the defendants herein. Through its wholly owned subsidiary Michigan Gas, Columbia Gas has constructed and now owns and operates said extension, and has received and is now receiving excessive profits therefrom, all in violation of the express provisions of the Decree aforesaid.

XII. By reason of its ownership and operation of said Detroit extension, Columbia Gas has been enabled to take [fol. 609] over, dominate and control the markets available to said Detroit extension in Indiana and southeastern Michigan (except the City of Detroit), and to restrain trade and commerce in natural gas by Panhandle Eastern in the said markets and in the Ohio markets of the Columbia companies adjacent to said extension. The map which is hereto annexed and marked Exhibit B shows the territory in and about the State of Indiana with the pipe lines of Panhandle Eastern and of the Columbia System as they existed prior to the commencement of this suit. The annexed map which is marked Exhibit C shows the same territory and the said lines as they existed on January 29, 1936, the date of the above mentioned Decree herein. The annexed map which is marked Exhibit D shows the location of the said Detroit extension together with various laterals therefrom which Columbia Gas has constructed to connect with existing artificial and mixed gas lines which are also shown on said

map, such extension of the Columbia System having occurred since the entry of said Decree herein and in order that Columbia Gas might control the markets in the aforesaid territory and enlarge its monopoly so as to include said Indiana and Michigan territory, and to restrain trade and commerce by Panhandle Eastern therein. The City of Toledo, in the State of Ohio, is twelve miles east of the Detroit extension as shown on said map, and is served by Columbia Gas from its Ohio system. By owning and operating said Detroit extension, Columbia Gas has prevented Panhandle Eastern from competing in the Toledo market, as well as in the other markets in the territory available to said extension, has restrained trade and commerce by Pan- [fol. 610] handle Eastern therein and has prevented Panhandle Eastern from freely transporting, selling and distributing gas within said territory. Under the terms of a contract between Michigan Gas and Panhandle Eastern, said Gano Dunn as Trustee under said Decree herein, and by the Columbia Gas-dominated Board of Panhandle Eastern, allocation is made of the prices received from the City of Detroit so that an unfair and unreasonable part thereof is paid to and retained by Michigan Gas, all to the detriment of Panhandle Eastern, its stockholders, and the public.

XIII. In addition to the moneys required for the construction of the aforesaid extension, Panhandle Eastern required, for the fulfilment of said Detroit contract, further moneys for the reinforcement of its own line. The above mentioned Decree herein expressly provided that if such financial assistance were procured from Columbia Gas, it must be furnished, as hereinabove set forth, only upon terms which did not (italicizing ours) "in *any* way directly or *indirectly*, presently or *potentially* confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern." Columbia Gas violated said express provision by causing its controlled affiliate, Columbia Oil, to acquire an additional 80,000 shares of the common stock of Panhandle Eastern shortly after the entry of the said Decree with moneys advanced by Columbia Gas, namely, the sum of $2,000,000. which Columbia Gas advanced to Columbia Oil for the express purpose of enabling the latter to make such payment and to acquire such stock. Said funds when received by Pan-

[fol. 611] handle Eastern were used by it for the said reinforcement of its said line. Such purchase of additional stock gave to Columbia Oil a majority of the common stock of Panhandle Eastern then outstanding, and Columbia Oil still owns such majority, and still owes Columbia Gas said $2,000,000.

While Columbia Oil was and is permitted, under said Decree of this Court, to acquire stock in Panhandle Eastern, such permission was made expressly subject to the further terms of said Decree, including the injunction against acquisition by Columbia Gas of any interest in Panhandle Eastern. The device herein set out was intended to evade the restraint imposed on Columbia Gas by said Decree, and to enable Columbia Gas to acquire an indirect or a potential interest in Stock of Panhandle Eastern having voting rights, and substantial control thereof, all in violation of the express terms of said Decree. At all times since the entry of said Decree the Board of Directors of Panhandle Eastern has been composed of nine persons and since at least the annual meeting of March of 1937, five of said nine have been nominees of Columbia Oil. Said five nominees of Columbia Oil and Gano Dunn, the Trustee aforesaid, have at all times done the bidding of Columbia Oil and Columbia Gas and have at no time taken any steps which would have been for the best interest of Panhandle Eastern if in doing so the interest of Columbia Gas or any of its associates or affiliates would have been injured.

XIV. Columbia Oil was initially organized by Columbia Gas for the purpose of holding certain of the properties and [fol. 612] securities of Columbia Gas. The original Board of Directors of Columbia Oil were selected by Columbia Gas and its officers and directors. The management thus put in charge of Columbia Oil by Columbia Gas at its inception has perpetuated itself in control of Columbia Oil at all times since its organization through the solicitation of management proxies and the use of said proxies to continue the same management in office. This has been rendered possible by virtue of the fact that a majority of the stockholders of Columbia Oil are stockholders of Columbia Gas and the officers of Columbia Oil have been stockholders of both Columbia Oil and Columbia Gas practically from the organization of Columbia Oil. At the last Annual stockholders' meeting of Columbia Oil the management proxy committee cast a vote for the same management which con-

sisted of 99.9% of the total votes cast, of which percentage 82.9% in turn represented stock owned and held by persons who were also stockholders of Columbia Gas. The two corporations have at all times been in effect identical in respect of management and control, and have at all times combined and conspired as hereinafter set forth to restrain trade and commerce in natural gas among the States in which Columbia Gas operated and operate directly and through subsidiaries. Through the control which Columbia Gas has at all times had over the business and affairs of Columbia Oil, through the perpetuation of the Columbia Gas management in office and the vote by Columbia Gas stockholders as aforesaid, Columbia Gas has been able to have Columbia Oil join with it in the combination and conspiracy herein- [fol. 613] after set forth and has at all times been able to use Columbia Oil, its officers and directors, as agents and instrumentalities of Columbia Gas in said combination and conspiracy to restrain the sale of natural gas in the territories above mentioned and to aid Columbia Gas to monopolize and attempt to monopolize the trade and commerce in natural gas in the territories aforesaid.

XV. The limitations imposed upon the above mentioned Trustee, Gano Dunn, by the provisions of sub-paragraphs (a) and (b) of Section III of the Decree above mentioned and the willingness of the said Gano Dunn to act as the agent and instrumentality of Columbia Gas and Columbia Oil have made it impossible for said Trustee to serve in accordance with the purposes of said Decree as an effective insulator against the control theretofore exercised by Columbia Gas, through Columbia Oil, over Panhandle Eastern and at all times since the entry of said Decree until the present time, Columbia Gas has exercised control and domination through Columbia Oil over Panhandle Eastern in restraint of trade in natural gas in the territories aforesaid and has thereby protected and strengthened its monopoly in the States of Ohio, Michigan, Indiana and adjoining territories.

XVI. In anticipation of further financing of Panhandle Eastern for the reinforcements of its line and the construction of said Detroit extension, Columbia Gas and Columbia Oil, in violation of said Section IV of said Decree, undertook to and did cause to be issued to Columbia Oil the following shares of preferred stock of Panhandle Eastern: [fol. 614] (1) 100,000 shares Class A, $6 accumulative and participating preferred stock having a par value of $100.

per share, each of said shares having voting rights share for share with the common stock on all matters excepting the election of directors;

(2) 10,000 shares of Class B, $6. preferred stock of the par value of $100 per share. This preferred stock is entitled to vote share for share with the common, and in addition thereto is entitled, as a class, to elect two directors of Panhandle Eastern. Said 10,000 shares was created and issued to Columbia Oil pursuant to the provisions of a settlement agreement entered into between the Columbia Gas and Columbia Oil and Receivers of Missouri-Kansas Pipe Line Co., a Delaware Corporation, sometimes herein referred to as Mokan. In the negotiations leading up to said settlement agreement, officers of Columbia Gas stated that they would not make a settlement with the Mokan Receivers of claims which said Mokan Receivers then had against the Columbia Gas and Columbia Oil, unless said Mokan Receivers would agree that said issue of Class B preferred stock be created and issued to Columbia Oil and be non-redeemable and non-callable and containing the provision that it should have the right to elect two directors of Panhandle Eastern. Said officers of Columbia Gas on its behalf stated that neither they nor Columbia Gas would agree to any settlement with said Receivers of Mokan unless Columbia Gas and Columbia Oil were given control on the Board of Panhandle Eastern. Said negotiations were had and said statement made after the entry of said Decree aforesaid and were directly contrary to the terms and provisions of said Decree.

XVII. The said 80,000 shares of common stock of Panhandle Eastern, when so acquired by the defendants herein, and also said two classes of preferred stock, namely, 100,000 shares of Class A and 10,000 shares of Class B, were turned over to, and legal title thereto is now held by said Gano Dunn as Trustee under said Decree.

[fol. 615] XVIII. After Columbia Gas and Columbia Oil had procured the ownership of the aforesaid Detroit extension, and additional common stock of Panhandle Eastern as above described, Columbia Gas and Columbia Oil thereupon, in further violation of the express terms of said Decree, and through the use of said Detroit extension acquired from Panhandle Eastern as aforesaid, contrived to and did effect arrangements with Panhandle Eastern for the

transportation of gas through the Detroit extension, so as to secure to themselves a further monopoly in the commerce of natural gas in Indiana, Ohio and Michigan, and to restrain trade and commerce by Panhandle Eastern therein, by causing Panhandle Eastern to enter into an agreement of March 17, 1936 with the Michigan Gas, the wholly-owned subsidiary of Columbia Gas, which provided in part as follows (Panhandle Eastern is referred to as "Eastern", and Michigan Gas Transmission Corporation as "Michigan") (Italicizing ours):

"4. *If at any time in the future,* while this Agreement remains in force, *Eastern has additional natural gas which is available* for ultimate distribution in the territory then reached by the pipe lines of Michigan, then (a) if Eastern has obtained a contract for the sale of such gas in such territory, Eastern shall have the right to require Michigan to accept and Michigan will accept such gas from Eastern at the Place of Delivery specified herein and will deliver such gas, provided, that Michigan shall be entitled to retain, out of payments made by the purchaser of such additional gas, not less than the amount which it would be entitled to retain if such additional gas were sold and accounted for on the same basis as the gas (other than gas delivered for ultimate resale to Special Industrial Customers) specified in Section 2 of this Article II; or (b) if Michigan has obtained a contract for the sale of such gas in such territory, Michigan [fol. 616] shall notify Eastern thereof and within fifteen days thereafter Eastern may by notice in writing require Michigan to assign and Michigan will assign such contract to it and Eastern shall then have the same rights with respect to such contract so assigned as are specified in subdivision (a) of this Section 4 or if Eastern does not elect to have such contract assigned to it, then (1) Michigan shall have the right to purchase such gas from Eastern for such resale, at a price calculated to yield Eastern the price set forth in Section 2 of Article VII hereof, and (2) Eastern shall have the right at any time when it may have such gas available on a firm basis (whether or not a supply of natural gas has been contracted for by Michigan elsewhere) to supply such gas to Michigan at a price (taking all factors into consideration) not less favorable to Michigan than the price at which such gas could otherwise be obtained by Michigan; provided, in any case, that the capacity of Michigan's pipe line and compressor station facilities shall be sufficient to carry

such additional gas without interfering with its ability to supply the actual requirements of Detroit Company under the Detroit Contract and of any present firm commitments of Michigan (not exceeding 2,250,000,000 cubic feet per year) and of any prior firm commitments hereafter incurred of Michigan or Eastern which are supplied by gas furnished by Eastern."

XIX. The purpose, intent and effect of the contract, from which the foregoing provision is quoted, was to enable Columbia Gas to contract with the various municipalities and distribution systems located along said extension in Indiana, Ohio and Michigan, for the sale by Columbia Gas of Panhandle Eastern's gas to such communities at prices and on terms satisfactory to Columbia Gas and to enable Columbia Gas further to dominate and control the sale of natural gas in the States of Ohio, Indiana and Michigan and to restrain trade and commerce by Panhandle Eastern therein. [fol. 617] Columbia Gas at the time of the making of said contract controlled the executive management of Panhandle Eastern and well knew that the gas reserve of Panhandle Eastern were more than adequate to supply the total capacity of Panhandle Eastern's pipe line and that there would be at all times "additional natural gas which is available for ultimate distribution in the territory then reached by the pipe lines of Michigan (Gas)", and intended thus to contrive and did contrive that Columbia Gas should have control of any gas of Panhandle Eastern that was available for ultimate distribution in the territory that might be then reached by the pipe lines of Michigan Gas and to exact for itself an unreasonable and unfair price for such gas, in order that the price structure of the Columbia System in Indiana and Michigan and more particularly in Ohio, should not be affected. The defendants herein (except Hillman) have agreed between themselves and with the management of Panhandle Eastern that the contracts between Panhandle Eastern and Michigan Gas should be construed so as not to permit Panhandle Eastern to sell gas for Industrial use directly in the territory reached by the line of Michigan Gas or to require the line of Michigan Gas to carry the same, with the result that Panhandle Eastern has been prevented from offering gas for industrial use in Indiana, Ohio and Michigan, particularly in the Toledo area, although it could have sold great quantities of the same.

XX. That annexed hereto and marked Exhibit E is a copy of certain resolutions duly adopted at the Annual Meeting of Stockholders of Panhandle Eastern duly called [fol. 618] and held on the 11th day of March, A. D. 1940 under the provisions of which this application is made. Said resolutions were proposed at said meeting and after being seconded, received the affirmative vote of persons and proxies at said meeting representing 373,600 shares of the common stock of Panhandle Eastern. All stockholders and proxies present at such meeting voted for said resolutions, except the management proxy, who represented 5,380 shares, and Harold B. Howard, proxy for 109 shares, neither of whom voted on the resolutions, and Gano Dunn, the Trustee for Columbia Oil under the terms and conditions of the Consent Decree entered herein on January 29, 1936, who sought to vote against the resolutions, which vote by the said Gano Dunn was, however, improperly and illegally cast.

That said letter of January 15, 1940 referred to in said resolutions demands inter-alia that Panhandle Eastern:

"4. Intervene in the proceedings pending in the United States District Court for the District of Delaware as provided in Paragraph V of the decree of said court entered on January 29, 1936 and request that the Columbia companies be held in contempt by virtue of their violations of Paragraph IV of said decree and pray that the Columbia companies be required to sell to Panhandle Eastern all of the stock of Michigan Gas Transmission corporation for the total investment of said companies in said corporation less dividends and all other monies received, directly or indirectly, by Columbia Gas & Electric Corporation from profits made by said Michigan Gas Transmission Corporation by virtue of the contract of March 17, 1936."

Wherefore, your petitioner, Panhandle Eastern, respectfully prays as follows:

[fol. 619] (1) That an order be entered herein allowing it to file this application and be made a party for the limited purpose of enforcing the rights conferred by Section IV of the consent decree entered herein on January 29, 1936, as is provided by Section V of said Consent Decree.

(2) That a trustee be appointed to hold all the stock of Michigan Gas and all interest of Columbia Gas in said Company, and that Columbia Gas be ordered to turn over

such stock and interests to such trustee to be held by him for the benefit of the Panhandle Eastern, subject only to repayment to Columbia Gas of sums actually advanced by it for the purpose of construction of the aforesaid pipe line, less any dividends and all other moneys received directly or indirectly by Columbia Gas from profits made by said Michigan Gas and provided any balance due to Columbia Gas shall be a first charge on the assets and earnings of the trust estate.

(3) That the trustee herein, Gano Dunn, be directed forthwith to deliver up and surrender to Panhandle Eastern 80,000 shares of its capital stock received as mentioned in paragraph XIII herein, and that the defendants Columbia Oil and Columbia Gas be directed to receive in lieu thereof a security which does not in any way directly or indirectly, presently or potentially, confer on Columbia Gas any voting rights, control or participation in the management of, Panh lle Eastern.

(4) That said trustee, Gano Dunn, be directed to vote the common stock and the 100,000 shares of Class A pre- [fol. 620] ferred stock and the 10,000 shares of Class B preferred stock of Panhandle Eastern so that the provisions of such preferred stock may be suitably amended to eliminate any and all right of the holders thereof to vote on any matter whatever, including the election of directors.

(5) For such other and further relief as to the Court may seem appropriate under the provisions of said Section IV of said Decree.

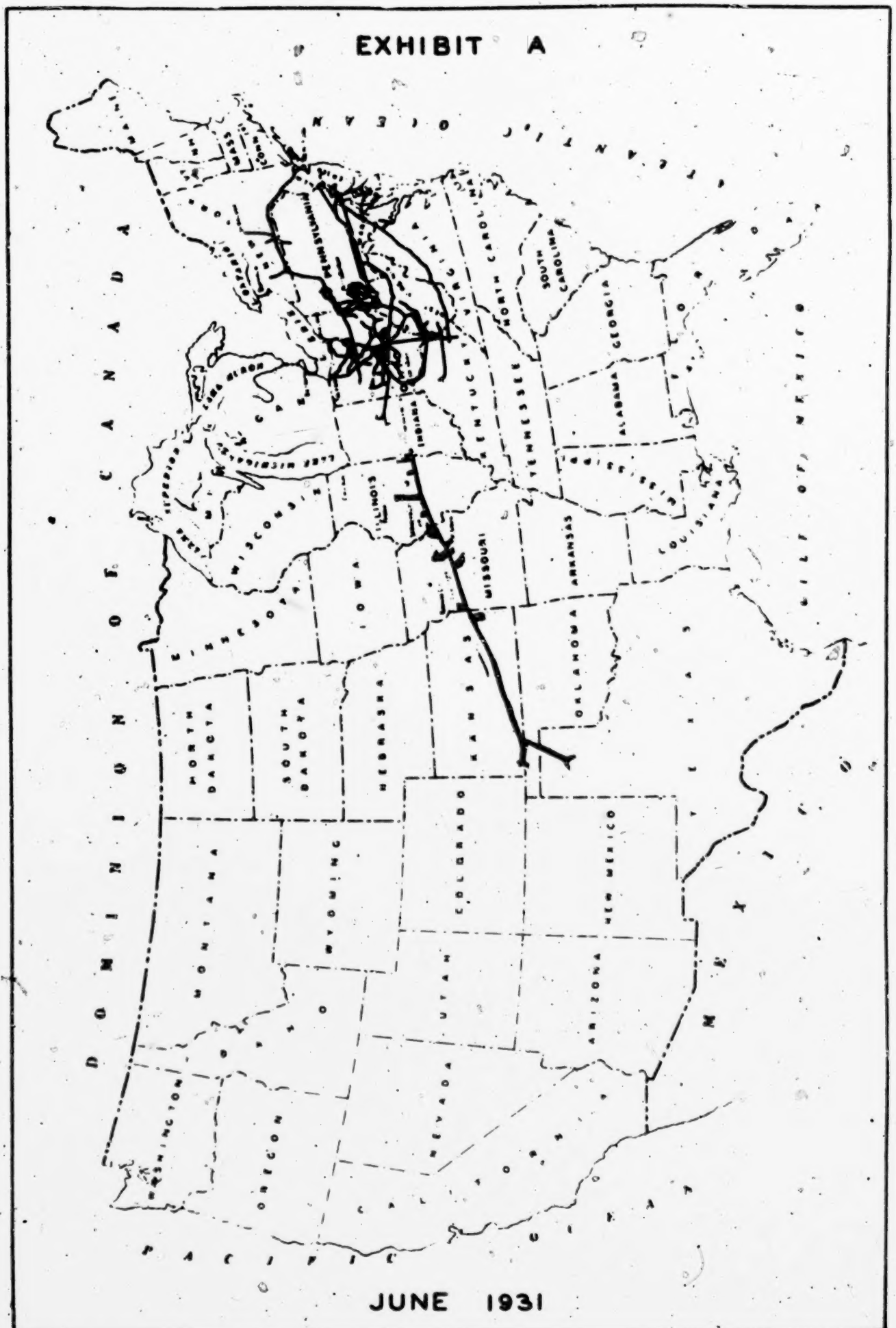
And it will be forever prayed, etc.

Panhandle Eastern Pipe Line Company, By (Sgd.) Arthur G. Logan. (Sgd.) Logan and Duffy, Attorneys for Petitioner, 303 Delaware Trust Building, Wilmington, Delaware. Russell Hardy, 729 Fifteenth Street, Washington, D. C. Robert J. Bulkley, Bulkley Building, Cleveland, Ohio. Arthur G. Logan, 303 Delaware Trust Building, Wilmington, Delaware, Of Counsel.

(Here follow 4 Photolithographs, side folios 621-624.)

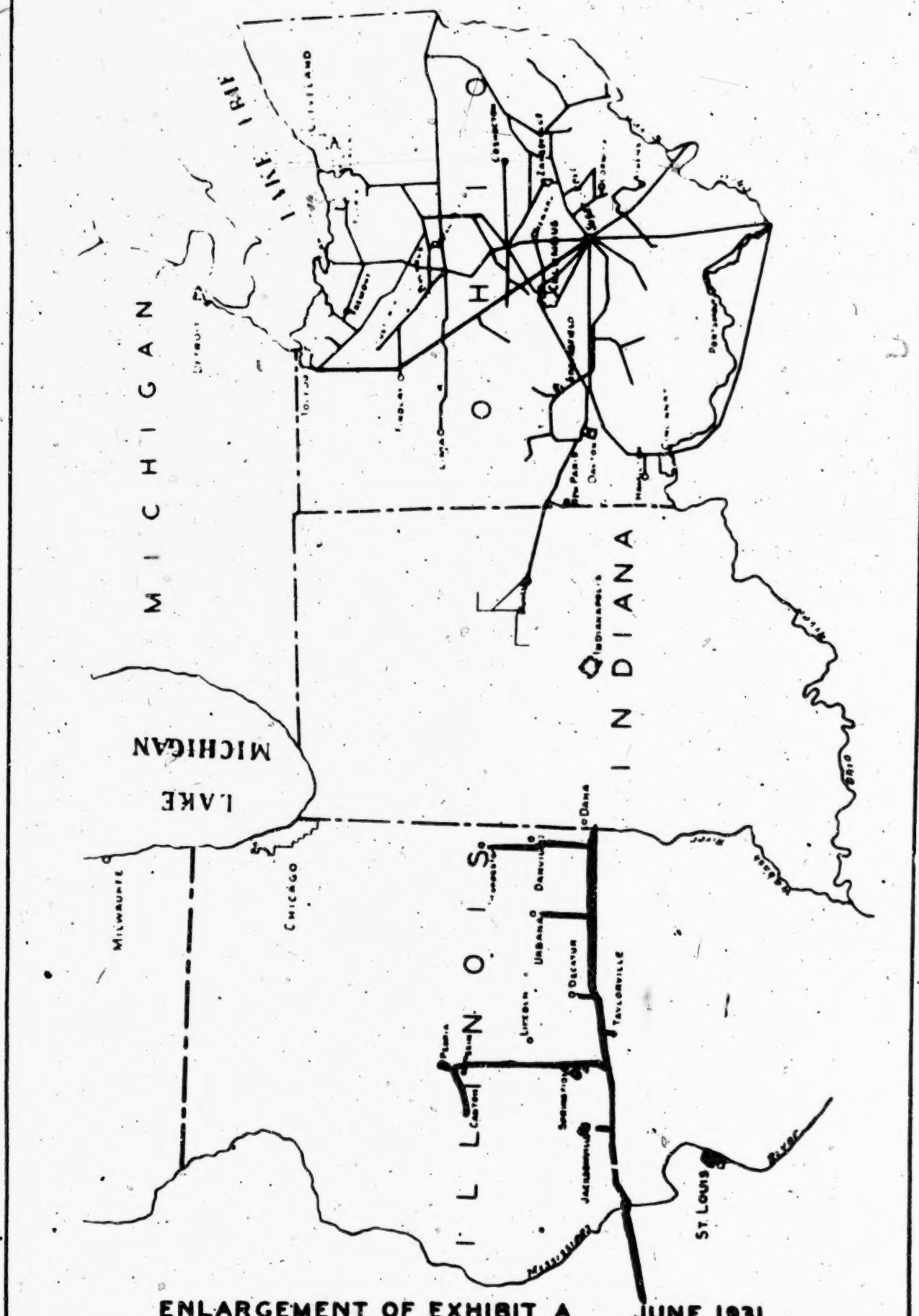
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EXHIBIT A



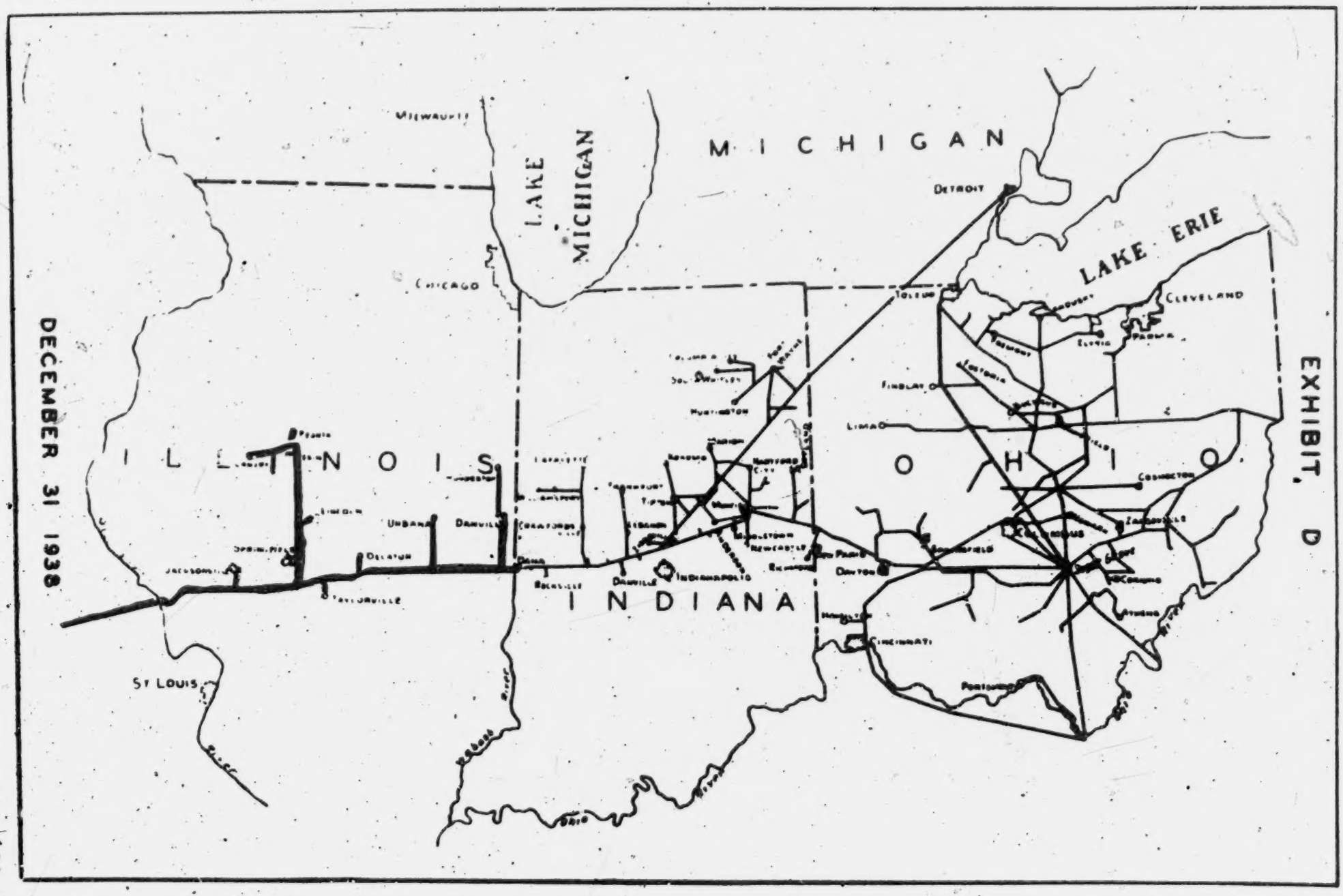
JUNE 1931

EXHIBIT B



ENLARGEMENT OF EXHIBIT A JUNE 1931

MILWAUKEE
LAKE MICHIGAN
MICHIGAN
DETROIT
LAKE ERIE
CHICAGO
TOLEDO
CLEVELAND
ILLINOIS
OHIO
INDIANA
ST. LOUIS
JANUARY 29 1936
EXHIBIT C



DECEMBER 31 1938

EXHIBIT D

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[fol. 625] EXHIBIT "E"

Whereas by letter dated January 15, 1940 to this corporation, its directors and officers, Missouri-Kansas Pipe Line Company, a substantial stockholder of this corporation, proposed and demanded that certain action be taken by this corporation; and

Whereas this corporation, its officers and directors have failed and neglected to comply therewith in any respect; and

Whereas it is the sense of this meeting that the actions set forth in said letter, a copy of which was ordered to be made a part of the minutes of the Board of Directors of this corporation of January 17, 1940, constitute causes of action, which are assets of this corporation and should be pursued;

Now, therefore, be it resolved that this corporation take the actions set forth and described in paragraphs 1 to 6 inclusive of said letter of January 15, 1940; and

Be it further resolved that this corporation employ and hereby do employ Robert J. Bulkely, of Cleveland, Ohio, Russell Hardy, of Washington, D. C., and Arthur Logan, of Wilmington, Delaware, as its attorneys to undertake said proceedings by filing such suits in such Courts and taking such appeals with respect thereto as they in their judgment deem necessary and advisable; and

Be it further resolved that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services.

[fol. 626] IN UNITED STATES DISTRICT COURT

ORDER SETTING APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY FOR LEAVE TO INTERVENE DOWN FOR HEARING—Filed March 23, 1940

And now, to wit, this 23d day of March, A. D. 1940, upon reading and considering the application of Panhandle Eastern Pipe Line Company for leave pursuant to the provisions of Section V of the decree entered herein on the twenty-ninth day of January, A. D. 1936, to become a party hereto, for the limited purpose of enforcing the rights conferred by Section IV thereof, it is, upon motion of Arthur

G. Logan, Esq., attorney for said Panhandle Eastern Pipe Line Company,

Ordered by the Court that said application be and hereby is set down for hearing before this court at the United States Court Room in the City of Wilmington in said district on the first day of April, A. D. 1940 at ten o'clock in the forenoon, at which time and place any party in interest may appear and show cause, if any they have, why said application should not be granted.

It is further ordered by the Court that notice of the time and place of said hearing be forthwith given to the other parties to this cause, and to that end that a copy of said application and of this order be forthwith served upon said other parties or their attorneys of record.

(Sgd.) John P. Nields, J.

[fol. 627] IN UNITED STATES DISTRICT COURT

MOTION OF COLUMBIA GAS & ELECTRIC CORPORATION TO DISMISS APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY TO BE MADE A PARTY, ETC.—Filed March 29, 1940

Columbia Gas & Electric Corporation, one of the defendants in the above-entitled cause, by Clarence A. Southerland, its attorney, now moves the Court, upon the affidavits of Joe D. Creveling, Gano Dunn and D. M. Wilson annexed hereto, to dismiss the alleged application of Panhandle Eastern Pipe Line Company, filed herein on March 23, 1940, on the ground that the alleged application is not signed or verified by Panhandle Eastern Pipe Line Company, and on the further ground that the attorneys whose names appear on the alleged application as attorneys for Panhandle Eastern Pipe Line Company are not attorneys for Panhandle Eastern Pipe Line Company, and were not authorized by Panhandle Eastern Pipe Line Company to act on its behalf.

(Sgd.) C. A. Southerland, Attorney for Columbia Gas & Electric Corporation, 948 Delaware Trust Building, Wilmington, Delaware.

[fol. 628] AFFIDAVIT OF JOE D. CREVELING IN SUPPORT OF COLUMBIA GAS' MOTION TO DISMISS APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY

STATE OF NEW YORK,
County of New York, ss:

JOE D. CREVELING, being duly sworn, deposes and says:

I am the president of Panhandle Eastern Pipe Line Company, duly elected by the duly constituted Board of Directors of Panhandle Eastern Pipe Line Company.

Arthur G. Logan, the attorney who signed the application filed on or about March 23, 1940, in the above-entitled cause, and the other attorneys whose names appear on said application acted without any authority from Panhandle Eastern Pipe Line Company in filing the application in the above-entitled cause.

The authority under which Logan and said other attorneys purport to act is a resolution which was presented to the annual meeting of stockholders of Panhandle Eastern Pipe Line Company on March 11, 1940, at which meeting I was present, and which was defeated by the majority of the stockholders present in person or by proxy at said meeting. Said meeting was duly adjourned by vote of the majority of stockholders present at said meeting in person or by proxy without any action being taken to authorize Logan or said attorneys or anyone else to file an application in the above cause on behalf of Panhandle Eastern Pipe Line Company. No action has been taken by the duly constituted Board of Directors of Panhandle Eastern Pipe Line Com-
[fol. 629] pany to authorize Logan or said attorneys or anyone else to file an application in the above cause on behalf of Panhandle Eastern Pipe Line Company. None of the duly constituted officers of Panhandle Eastern Pipe Line Company has authorized Logan or said attorneys or anyone else to file an application in the above cause on behalf of Panhandle Eastern Pipe Line Company.

There is attached hereto a transcript of the proceedings at the annual meeting of stockholders of Panhandle Eastern Pipe Line Company held at 19-21 Dover Green, Dover, Delaware, on March 11, 1940, certified to be a true and correct transcript by Harry J. Blam, an official shorthand reporter for the Delaware law courts. There are also attached hereto the By-laws of Panhandle Eastern Pipe Line Company and

the notice of meeting for the annual meeting of stockholders of Panhandle Eastern Pipe Line Company held on March 11, 1940, which was sent to the stockholders of Panhandle Eastern Pipe Line Company, both of which have been certified as true and correct copies by the Secretary of Panhandle Eastern Pipe Line Company.

(Sgd.) Joe D. Creveling.

Subscribed and sworn to before me this 28th day of March, 1940. (Sgd.), Frank A. Moyer. Notary Public. Notary Public, Kings Co., N. Y. Kings Co. Clk's No. 205, Reg. No. 2221. N. Y. Co. Clk's No. 574, Reg. No. 2M353. Commission expires March 30, 1942. (Notarial Seal.)

[fol. 630] Certificate

I, HARRY J. BLAM, an official shorthand reporter for the Delaware law courts, attended the Annual Meeting of Stockholders of Panhandle Eastern Pipe Line Company held at No. 19-21 Dover Green, Dover, Delaware, on Monday, March 11, 1940, and at such meeting I correctly and accurately took and transcribed complete notes of everything that took place at such meeting; and I hereby certify that the attached document entitled "Annual Meeting of Stockholders of Panhandle Eastern Pipe Line Company held at the principal office of the Company, No. 19-21 Dover Green, Dover, Delaware, on Monday, March 11, 1940, at 2 o'clock, P. M., Eastern Standard Time." is a true and correct copy of the transcript taken by me at such meeting.

(Sgd.) Harry J. Blam.

Subscribed and sworn to before me this 28th day of March, 1940. (Sgd.) Emily M. Harrigan. (Notarial Seal.)

[fol. 631] ANNUAL MEETING OF STOCKHOLDERS OF PANHANDLE EASTERN PIPE LINE COMPANY HELD AT THE PRINCIPAL OFFICE OF THE COMPANY, NO. 19-21 DOVER GREEN, DOVER, DELAWARE, ON MONDAY, MARCH 11, 1940, AT 2 O'CLOCK, P. M., EASTERN STANDARD TIME

[fol. 632] Present:

Joe D. Creveling, President of the Corporation and Chairman of the meeting.

Leith V. Watkins, Secretary of the Corporation.

E. M. Goodwin, Esq., of Counsel for the Corporation.

Edwin D. Steel, Jr., Esq., of counsel for the Corporation.

Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation, appointed pursuant to Consent Decree, dated January 29, 1936, in Cause No. 1099 in Equity in the District Court of the United States for the District of Delaware.

Louis F. Sperry, a stockholder.

William G. Maguire, a proxy holder.

A. Faison Dixon, a proxy holder.

Arthur G. Logan, Esq., representing the Proxy Committee of W. G. Maguire and A. Faison Dixon, and also Missouri-Kansas Pipe Line Company.

Richard B. Hand, Esq., a proxy holder, and representing the Proxy Committee of W. G. Maguire and A. Faison Dixon and also Missouri-Kansas Pipe Line Company.

[fol. 633] Harold B. Howard, Esq., a proxy holder.

William C. Tringham.

Geoffrey L. Mellor, proxy holder for Howard B. Perry.

S. R. Nussenfeld.

The Chairman: The meeting will please come to order. This is an annual meeting of the stockholders of Panhandle Eastern Pipe Line Company, called and held in accordance with the laws of the State of Delaware and the by-laws of the Company.

This is the first time that we have had a stockholders' meeting in which there has been public representation. Previously we have only had two stockholders, both of which were corporations, and I wish to welcome any individual stockholder who may be here.

In view of the fact that we have not succeeded in checking all proxies against stockholders' lists, I will entertain a motion to recess this stockholders' meeting until three-

[fol. 634] thirty.

Mr. Dunn: I move that we recess until three-thirty.

The Chairman: How much stock do you represent, Mr. Dunn?

Mr. Dunn: I represent 404,326 shares of common stock, 100,000 shares of Class A Preferred, and 10,000 shares of Class B Preferred.

The Chairman: That constitutes a majority of all classes of stock. Is there a second to the motion?

Mr. Sperry: I second the motion.

The Chairman: All in favor say "aye".
Mr. Dunn: Aye.
Mr. Sperry: Aye.
The Chairman: Contrary?
We are recessed until three-thirty.

(At this point a recess was taken.)

(The meeting reconvened at six-thirty o'clock, P. M., the same day, at which time all the persons before noted were present.)

The Chairman: Mr. Secretary, have you polled the meeting now and are all present stockholders or holders of proxies?
[fol.635] Mr. Nussenfeld: I don't represent a stockholder, nor do I hold a proxy for any stockholder. I would just like to attend by sufferance.
The Chairman: Does anybody want to object?
Mr. Logan: Missouri-Kansas Pipe Line Company has an objection as a stockholder.
The Chairman: Mr. Nussenfeld, I will have to ask you to leave the meeting.
Mr. Nussenfeld: I came down from New York for the purpose of attending the meeting.
The Chairman: This is a closed meeting; I am sorry.

(At this point Mr. S. R. Nussenfeld left the meeting.)

Mr. Logan: Can you state the attendance for us at this time by groups and shares?
The Chairman: We have that coming up here right away. Would you mind having that come second instead of first? I was going to have the Secretary read the notice of the meeting and the affidavit of mailing, and then that second.
Will the Secretary read the notice of the meeting and the affidavit of mailing of such notice?

(The Secretary read the notice of the meeting and the [fol. 636] affidavit of mailing of notice to the meeting.)

The Secretary: I present to the meeting a full, true, and complete list of the stockholders of the Company entitled to vote at this meeting, arranged in alphabetical order, with the address of each said stockholder as it appeared on the stock books of the company, and the number of shares

of common stock held by each such stockholder, which list I have prepared through Chemical Bank and Trust Company, the transfer agent of the Company appointed by the Directors, as of the close of business on February 28, 1940, the date fixed by the Board of Directors for the taking of a record of the stockholders entitled to notice of, and to vote at, this meeting, and a similar list of the holders of the Class A and Class B preferred stocks of the company. These lists have been open at this office of the Company, No. 19-21 Dover Green, Dover, Delaware, for at least ten days prior to the meeting, to the examination of any stockholder.

The Chairman: I direct that these lists be kept here during the whole time of the meeting, and subject to the inspection of any stockholder present.

I will ask the Secretary to take the names of the stock-
[fol. 637] holders who are present in person and of proxies representing stockholders, and to report to the meeting the number of shares of stock of the company, the holders of which are present in person or represented by proxy and entitled to vote in person or by proxy at this meeting.

The Secretary: I submit a list showing the names of all holders of common stock and of Class A and Class B preferred stocks of the Company present in person and of proxies representing the holders of such stocks not present at this meeting, and report that there are present at the meeting or represented by proxy and entitled to vote holders of 783,465 shares of the common stock of the Company out of 807,367 shares of said common stock issued and outstanding, holder of all of the 100,000 shares of the Class A preferred stock of the Company issued and outstanding, and the holder of all of the 10,000 shares of the Class B stock of the Company issued and outstanding.

The stockholders present in person are:

Gano Dunn, Trustee, 100,000 shares of Class A, 10,000 shares of Class B, and 404,326 shares of common stock,

Richard B. Hand, 10 shares of common stock.

Arthur G. Logan, present in person, but his stock is being
[fol. 638] voted by proxy.

Louis F. Sperry, 50 shares.

John R. Perry, 170 shares.

Howard R. Perry, 23 shares.

Stockholders present by proxy:

William G. Maguire and A. Faison Dixon, 339,275 shares.

Leith V. Watkins and Louis F. Sperry, 5,380 shares.
William G. Maguire and A. Faison Dixon, 34,122 shares.
John J. Morris and Harold B. Howard, 109 shares.

The Chairman: The holders of 783,465 shares of common stock, 100,000 shares of Class B preferred, and the 10,000 shares of Class B preferred are in attendance at the meeting in person or by proxy and, therefore, a quorum is in attendance.

Mr. Logan: I would like to move Mr. A. Faison Dixon be made Chairman of this meeting from this time forward.

Mr. Hand: I second the motion.

The Chairman: Where is a copy of the by-laws?

Mr. Logan: I might say the by-laws state that the President shall act as Chairman, but the Court of Chancery has held that a meeting of stockholders can elect its own Chair-
[fol. 639] man at any time, as Mr. Steel will advise you.

Mr. Steel: I am not familiar with those decisions, Mr. Logan.

Mr. Logan: For the record, Mr. Steel, I will refer you to the opinion of the Chancellor in Duffy v. Loft, 17 Delaware Chancery 140; 101 Atlantic 223; 17 Delaware Chancery 376; 150 Atlantic 849.

The Chairman: The Chair rules the motion is out of order in view of the provision of the by-laws.

Mr. Logan: I appeal the ruling of the Chair to the floor.

The Chairman: The next order of business is——

Mr. Logan: I certainly insist upon my right to have an appeal from the ruling of the Chair to the floor.

The Chairman: In what form?

Mr. Logan: In the form of a vote.

The Chairman: By shares?

Mr. Logan: Yes, by shares.

Mr. Dunn: What is the motion before the house?

The Chairman: I think that is all right. I rule that you have that right.

Mr. Logan: I call attention of the Corporation to the fact
[fol. 640] that Mr. Gano Dunn cannot vote on this motion.

I now call for the question.

Mr. Gano Dunn is a stockholder, as the stock records show of stock owned by Columbia Oil & Gasoline Corporation under a specific trust which is referred to on the stock list. He has no right to vote any question except where he has the instruction from the beneficial owners thereof which is Columbia Oil & Gasoline Corporation. That is pro-

vided in Paragraph 3-B of the decree which, after the question with respect to voting on the Directors, provides this: "To vote said stock upon all other questions and matters in which the stock is entitled to vote as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree."

There is nothing here inconsistent with the purposes of the decree, and he is not permitted by the express terms of his trust, which is a record of this corporation, to vote on this motion.

Mr. Dunn: What is the motion, Mr. Chairman?

The Chairman: An appeal from the ruling of the Chair.

Mr. Dunn: Put it in form.

[fol. 641] The Chairman: That Mr. A. Faison Dixon be elected Chairman of this meeting. Is that correct, Mr. Logan?

Mr. Logan: That is correct.

The Chairman: It is an appeal from the ruling of the Chair.

Mr. Dunn: I would like to have the motion put so I can understand it.

Mr. Logan: The motion originally was that Mr. A. Faison Dixon be made Chairman of this meeting to serve as Chairman from this time forward and at all times during the meeting. The Chair refuses to entertain that motion. The Chair ruled against the motion and I have appealed from the ruling of the Chair to the floor. The Chair has agreed that the appeal shall be had to the floor by a stock vote, and I request that the appeal be submitted to a stock vote, and I point out that Mr. Dunn cannot vote on that motion.

Mr. Dunn: Then your motion really is, Shall the Chair be supported?

The Chairman: I want to call your attention to the fact that my ruling is because of this:

"The President shall be the chief executive officer of the [fol. 642] corporation; he shall preside at all meetings of the stockholders and directors; he shall have general and active management of the business of the corporation, and shall see that all orders and resolutions of the Board are carried into effect."

That is Section (a) of 25 of the by-laws of Panhandle Eastern Pipe Line Company.

I also call your attention to the fact that in Section 42 of the by-laws provision for amendments is made as follows:

"These by-laws may be altered or amended by the affirmative vote of a majority of the stock issued and outstanding and entitled to vote at any regular or special meeting of the stockholders, if notice of the proposed alteration or amendment be contained in the notice of the meeting, or by the affirmative vote of a majority of the Board of Directors; provided, however, that no change of the time or place for the election of directors shall be made within sixty days next before the day on which such election is to be held."

These have not been complied with; therefore, I ruled as I did.

Mr. Dixon: Question. There is a motion before the [fol. 643] house.

Mr. Logan: There is an appeal from the ruling of the Chair before the house.

The Chairman: I ask for a vote of the stockholders present to sustain the Chair.

Mr. Logan: Question.

The Chairman: Those in favor of sustaining the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary?

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

Mr. Logan: I would like to put a question as to whether or not Mr. Dunn is voting at the request of the Columbia Oil & Gasoline Corporation.

Mr. Dunn: I am.

Mr. Logan: Have you been directed by the Columbia Oil & Gasoline Corporation to vote as you now are voting on this appeal?

[fol. 644] Mr. Dunn: Yes, I am.

Mr. Logan: Do you have that in writing?

Mr. Dunn: No.

Mr. Logan: Who gave you that direction?

Mr. Goodwin: Don't answer any more questions; you don't have to.

Mr. Logan: We have a right to know whether this Chairman is entitled to act as Chairman from now on. We may proceed with our own Chairman and conduct the meeting if he is not legally and duly Chairman.

Mr. Goodwin: Suit yourself. You record your protest for what it is worth.

Mr. Logan; We have a right to know whether Mr. Dunn is voting under the terms of his decree or violating it. If he is violating it his vote cannot be counted.

Mr. Dunn, will you answer what directions you have from Columbia Oil & Gasoline Corporation?

The Chairman: We will proceed with the meeting.

Mr. Logan: No, you won't.

The Chairman: The majority will.

Mr. Logan: I move that Mr. A. Faison Dixon be elected Chairman of this meeting by a vive voce vote.

[fol. 645] All in favor signify by saying aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Logan: Aye.

Contrary?

Mr. Dixon, you are Chairman of the meeting. I suggest you step forward and take the Chair.

The Chairman: The next order of business is the appointment of the judges for this meeting and all adjournments thereof, to decide upon the qualifications of voters, to canvass and accept the votes that may be taken at this meeting upon any matters that may come before the stockholders for action thereat and to make reports thereon.

Mr. Logan: Mr. Creveling, do you refuse to relinquish the Chair?

The Chairman: I do.

Mr. Logan: Mr. Creveling, Mr. Dixon is now seeking to take the Chair.

The Chairman: Have your meeting in another room.

Mr. Logan: Do you refuse to surrender the Chair?

[fol. 646] The Chairman: Yes.

Mr. Dixon: You refuse to give me the Chair?

The Chairman: That is correct.

Mr. Logan: All right. Now, Mr. Creveling, I will now

advise you that those who voted for Mr. Dixon to act as Chairman of this meeting will, as soon as you relinquish the Chair, whether it be today or as long as you want to sit there, continue with the meeting and have a proper meeting.

The Chairman: Mr. Thomas M. Keith and Mr. Leonard G. Hagner have spent the past few hours re-checking and re-tabulating the proxies. Will somebody please move the adoption of a resolution appointing these gentlemen as judges to act at this meeting and all adjournments thereof?

Mr. Dunn: I so move.

Mr. Sperry: I second the motion.

The Chairman: It has been moved and seconded that Thomas M. Keith and Leonard G. Hagner shall be appointed to act as judges of this meeting and all adjournments thereof. All those in favor say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary?

The motion is carried.

[fol. 647] Mr. Hand: May I ask if in voting on that appointment Mr. Dunn is acting on the instructions of Columbia Oil & Gasoline Corporation?

The Chairman: The motion has been carried.

Mr. Hand: May I have the record show Mr. Goodwin advised Mr. Dunn not to answer the question.

Mr. Logan: I want to call the attention of the Chairman to the fact that Mr. Dunn is a stockholder, and the records show a stockholder by an express trust referred to in the stock lists. That express trust restricts him from casting any vote on any matter whatsoever except as directed by the beneficial owners of the stock; namely, Colum ia Oil & Gasoline Corporation. I demand that he state any time he votes on any matter whether or not Columbia Oil & Gasoline Corporation directed him to do so, and if so, whether orally or in writing, the person who gave him the directions, the time when they were given, and any details he feels pertinent to prove that he did get such direction, and in the absence of any full statement showing his right to vote, we challenge any action or vote he takes.

The Chairman: The motion has been carried. Mr. Thomas M. Keith and Mr. Leonard G. Hagner have been [fol. 648] appointed judges. Will they please subscribe an oath to discharge their duties faithfully and will the

Secretary please incorporate such oaths when so subscribed in the minutes of the meeting?

(The oath was duly subscribed to by the Inspectors.)

The Chairman: The Secretary will please deliver to the judges the lists of stockholders of the company and the proxies which have been submitted to you for examination by them. After the judges have completed their examination, please file and preserve said lists and proxies among the records of the Company.

Will you look over, examine, and check those lists now, please?

Mr. Keith: May I ask you if the list which you now turned over includes in here the ones which were rejected by the Inspectors in their work?

The Secretary: It does.

Mr. Keith: I think we should have the entire record of those accepted and rejected.

Mr. Maguire: Would you mind telling us how many stockholders there are besides the shares——

The Chairman: May we not proceed with the reading of the minutes of the last meeting by the Secretary while the [fol. 649] judges are making their report?

Mr. Logan: Yes, surely.

The Chairman: Mr. Secretary, will you please read the minutes of the last annual meeting of the stockholders of the company held on March 13, 1939.

The Secretary: (Reading) "The Annual Meeting of the Stockholders of Panhandle Eastern Pipe Line Company, a Delaware corporation, was held at the office of the Company, No. 90 Broad Street, New York, N. Y., on Monday, March 13, 1939, at 10:00 o'clock A. M., pursuant to due consent and waiver of notice signed by all the Stockholders of the Company.

The President of the Company, Mr. Joe D. Creveling, called the meeting to order and presided, and Mr. Leith V. Watkins, Secretary of the Company, acted as Secretary of the meeting.

The Secretary presented to the meeting the consent and waiver of notice, signed by all of the Stockholders of the Company."

Then follows the consent and waiver of notice.

Do you want me to read the list of stockholders present?

Mr. Logan: Yes, let us see how Mr. Dunn appears.

[fol. 650] The Secretary: (Reading)

Name and Address	No. of Shares Preferred Class A	Class B	Common
Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation, appointed pursuant to Decree, dated January 29, 1936, in Cause No. 1099 in Equity in the District Court of the United States for the District of Delaware. 80 Broad Street, New York, N. Y.	100,000	10,000	404,326
Missouri-Kansas Pipe Line Company, 120 Broadway, New York, N. Y.	.....	.....	324,326
Total Shares	100,000	10,000	728,652

Mr. Logan: You show Mr. Dunn as Trustee under the express trust.

The Secretary: The record shows that.

(Continuing to read.)

The Chairman directed the Secretary to take the names of the stockholders present in person or represented at the [fol. 651] meeting by Proxy. The Secretary, having done so, reported that there were present Mr. Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation, appointed pursuant to Decree, dated January 29, 1936, in Cause No. 1099 in Equity in the District Court of the United States for the District of Delaware, the holder of record of all the issued and outstanding Preferred Stocks of the Company and 404,326 shares of the issued and outstanding Common Stock of the Company, and Messrs. William G. Maguire and Kenneth E. Walser, as Proxies for Missouri-Kansas Pipe Line Company, the owner of the remaining 324,326 shares of the issued and outstanding Common Stock of the Company, which constituted the entire stock of all classes outstanding and entitled to vote at the meeting. The Chairman thereupon announced that a quorum was present.

Acts and Proceedings of the Officers and Board of Directors of the Company

The Chairman then stated that it would be in order for the Stockholders to approve, ratify and confirm the acts and proceedings of the officers and the Board of Directors as set forth in the minutes of the meetings of the Board of

Directors since the last Annual Meeting of the Company, all the said minutes being present at the meeting. There-
[fol. 652] upon, the following resolution was presented and adopted by a majority vote, Messrs. William G. Maguire and Kenneth E. Walser voting no:

Resolved that the acts and proceedings of the officers and Board of Directors of this Company as set forth in the minutes of the meetings of the Board of Directors since the last Annual Meeting of the Company be in all respects approved, ratified and confirmed.

Annual Reports

The President and the financial and accounting officers of the Company then made oral annual reports and stated that all of the matters so reported had been included in the printed annual report previously distributed to the stockholders. Whereupon, on motion duly made, seconded and unanimously adopted, the annual reports of the President and the financial and accounting officers as presented to this meeting were in all respects approved, ratified and confirmed."

Mr. Maguire: That is not correct, because we kicked about that annual statement, and if you refer to the minutes in the Directors' Meeting, we did not think it was correct,
[fol. 653] and my recollection is that I voted no. I am afraid I am going to have to vote against that.

The Chairman: As far as I recall it, you said as far as the Annual Report was concerned, you said, "I will vote for that."

Mr. Logan: It gives an implication further than Mr. Maguire wants. Read it again.

The Secretary: (Reading.) "The President and the financial and accounting officers of the Company then made oral annual reports and stated that all of the matters so reported had been included in the printed annual report previously distributed to the stockholders. Whereupon, on motion duly made, seconded, and unanimously adopted, the annual reports of the President and the financial and accounting officers as presented to this meeting were in all respects approved, ratified and confirmed."

The Chairman: That is referring to the Annual Report. The approval, as I understand it, goes to the written re-

port. Now, Mr. Maguire, it is my recollection that you agreed to approve and vote with the others on the approval of the Annual Report. If you have a contrary recollection, I see no objection to correcting this.

[fol. 654] Mr. Maguire: I wish you would.

The Secretary: I am positive that both the stockholders received copies of the minutes of the meeting very shortly after the meeting was held, and there has been no objection.

The Chairman: Let us go on with the remainder of the reports and come back to this point later.

The Secretary: (Reading) "The minutes of the last Annual Meeting of the Stockholders having been read, it was unanimously

Resolved that the minutes of the last Annual Meeting of the Stockholders of this Company, held March 14, 1938, be and hereby are in all respects approved.

Election of Directors

The Chairman then stated that it would be in order to proceed with the election of Directors of the Company for the ensuing year. Thereupon, on motion duly made and seconded, it was unanimously

Resolved that the use of Judges of Election be dispensed with and that the meeting proceed to the election, by ballot, [fol. 655] of Directors to serve for the ensuing year and until their successors shall have been elected and qualified.

Nominations having been called for, Mr. Gano Dunn, the Trustee, nominated Messrs. John E. Bierwirth, Joe D. Creveling, Gano Dunn and Walter G. Mortland, and Messrs. William G. Maguire and Kenneth E. Walser nominated Messrs. A. Faison Dixon, William G. Maguire and Kenneth E. Walser as Directors representing Common Stock. Mr. Gano Dunn, the Trustee, then nominated Messrs. Joseph A. Bower and Robert C. Winmill as Directors representing the Class B. Preferred Stock and all nominations were then duly seconded.

There being no other nominations, the nominations were, on motion duly made, seconded and unanimously carried, closed, and the Chairman declared the polls open.

All of the Stockholders of the Company present or represented at the meeting, and entitled to vote thereat for

the election of Directors, having voted, the Chairman ordered the polls closed and directed the Secretary to canvass the votes cast. Messrs. William G. Maguire and Kenneth E. Walser, as Proxies for Missouri-Kansas Pipe Line Company, objected to the election of Directors by the Class B Preferred Stock upon the grounds that said stock was [fol. 656] issued and the beneficial ownership thereof is held by Columbia Oil & Gasoline Corporation and through it by Columbia Gas & Electric Corporation in violation of the Consent Decree dated January 29, 1936. The Secretary having canvassed the votes reported that the votes cast for the Directors of this Company, each to serve until the next Annual Meeting of the Stockholders of the Company or until his successor is elected and shall qualify, were as follows:

Name	Votes Received
Elected by Common Stock:	
John E. Bierwirth	707,571
Joe D. Creveling	707,571
Gano Dunn	707,570
Walter G. Mortland	707,570
A. Faison Dixon	756,761
William G. Maguire	756,761
Kenneth E. Walser	756,761
Elected by Class B Preferred stock:	
Joseph A. Bower	10,000
Robert C. Winmill	10,000

The Chairman thereupon announced that the following gentlemen had been elected Directors of the Company for [fol. 657] the ensuing year:

Messrs. John E. Bierwirth, Joseph A. Bower, Joe D. Creveling, A. Faison Dixon, Gano Dunn, William G. Maguire, Walter G. Mortland, Kenneth E. Walser and Robert C. Winmill.

Organization Meeting of the Board of Directors

The Chairman then stated that it would be in order to fix the place and time of the Organization Meeting of the newly elected Board of Directors. Thereupon, on motion duly made and seconded, it was unanimously

Resolved that the Regular Monthly Meeting of the Board of Directors to be held Wednesday, March 15, 1939, at 3:30

o'clock P. M., at No. 9[illegible] Broad Street, New York, New York, be also the meeting of the Board elected at this meeting of [fol. 658] the Stockholders for the purpose of organization or otherwise.

Adjournment

There being no further business to come before the meeting, it was, on motion duly made and seconded and unanimously carried, adjourned.

Leith V. Watkins, Secretary."

The Chairman: As I understand it, Mr. Maguire's memory is to the effect that he did not approve all the acts and so on of the officers and directors?

Mr. Maguire: That is correct.

The Chairman: And my remembrance is the same as Mr. Maguire's on that. So far as approving the annual report as sent out by the President under the authorization of the Board of Directors, it is my remembrance that that was unanimously approved.

Mr. Hand: Do you think that went to form, Mr. Creveling?

The Chairman: I didn't get the question.

Mr. Hand: Do you think that approval went to the form of the document rather than the intention to approve the acts?

[fol. 659] The Chairman: I think it was to approve the contents of the document.

Mr. Logan: Wasn't it, if an approval, an approval of the statements in there, but not an approval of the actions of the officers?

The Chairman: Of all the actions of the officers and Board of Directors, I think that is right.

Mr. Logan: It merely might mean that the statements contained in it were accurate, but that the actions of the officers, including the President, were not approved because of the approval of that particular letter. Wouldn't that be your understanding?

The Chairman: It was my very definite understanding that the thing that was approved unanimously was the Annual Report as it was submitted, which, of course, would be the statements in the Annual Report, and that, I think, you did approve, Mr. Maguire.

Mr. Logan: That is all right.

The Chairman: And all of the acts of the officers and directors, Mr. Maguire and the other proxy did not approve. [fol. 660] Mr. Logan: That is satisfactory.

The Secretary: The Resolution preceding that so states.

The Chairman: That is what this should show. With that understanding, I should like a motion to approve the minutes of the last Annual Meeting of stockholders.

Mr. Dunn: I move they be approved.

Mr. Sperry: I second the motion.

The Chairman: Any further comments on that?

Before we vote on that, is it clear from your standpoint, Mr. Maguire?

Mr. Maguire: As you stated it, if the Stenographer got it down.

The Chairman: That was my understanding.

All those in favor say "aye".

Mr. Dunn: Aye.

Mr. Sperry: Aye.

The Chairman: Contrary?

The motion is carried.

Mr. Logan: Mr. President, I notice that Mr. Dunn voted in favor of that motion. In fact, he made the motion and you accepted his motion. I would like to ask Mr. Dunn if he voted in accordance with the directions from Columbia [fol. 661] Oil & Gasoline Corporation. I also want the record to show that Mr. Dunn asked Mr. Goodwin what reply he should make. In view of that I would like to ask Mr. Goodwin if he is acting as counsel for the company or counsel for Mr. Dunn in this meeting.

Mr. Dunn: I object to that, because I did not ask Mr. Goodwin.

Mr. Logan: You turned to Mr. Goodwin.

Mr. Dunn: You are putting words in my mouth.

Mr. Dixon: You didn't ask by words, but you asked by signal.

Mr. Logan: Mr. Dunn, didn't you turn to Mr. Goodwin for instructions?

Mr. Goodwin: I volunteered the suggestion.

Mr. Logan: He did turn to you, did he not, Mr. Goodwin?

Mr. Goodwin: Yes.

Mr. Logan: Now, may I ask whether or not you are voting with directions from Columbia Oil & Gasoline Corporation, as the trust limits your rights——

The Chairman: I didn't get that.

Mr. Logan: As the Trust Agreement, which is a part of the records of this corporation, shows the limitations [fol. 662] upon his rights, the limitations being that he cannot vote the stock held by him except "as directed by the beneficial owners thereof," which beneficial owners happen to be, as the record show, Columbia Oil & Gasoline Corporation. I demand that the Chair ask Mr. Dunn each time he votes whether or not he has these directions, and if so that he indicate to the meeting in what nature he has them, when he received them, and if in writing that he produce them.

Mr. Dunn: I object to answering the question in that form.

Mr. Steel: Can't it be assumed that he has the instructions unless he states to the contrary?

Mr. Logan: No, it cannot.

Mr. Goodwin: As counsel for the Company, I advise the Company that he is not bound by the consent decree and that has nothing to do with it.

Mr. Logan: Mr. Goodwin, you are overlooking the fact that this stock stands of record with the name of the Trustee, with the Trust Agreement referred to, and showing the limitations upon it, and put on notice as to his express limitations. That being the case, I think we must insist upon a ruling.

[fol. 663] The Chairman: Mr. Dunn, I understand that you understand your rights as Trustee and that in casting votes at this meeting you are within your rights in so doing?

Mr. Dunn: I am.

Mr. Logan: Now, by that, Mr. Dunn, do you mean that every time you vote you are doing so through express direction from Columbia Oil & Gasoline Corporation?

Mr. Dunn: I decline to answer the question in that form.

Mr. Logan: In what form would you answer such a question?

Mr. Dunn: Same objection.

Mr. Logan: Mr. Dunn, would you state your position in connection with your voting?

Mr. Dunn: No.

Mr. Logan: You will not state your position?

Mr. Dunn: Except that I have a right to vote as I am voting, and I am voting within my rights.

Mr. Steel: As counsel for the Company, Mr. Dunn, may I

make this inquiry of you? You will not vote unless you conceive yourself to be voting properly and in accordance with the terms of the Trust Agreement?

[fol. 664] Mr. Dunn: I will not.

Mr. Steel: And in any circumstances where you conceive you are not entitled to vote under the terms of the Trust Agreement, I assume you will not vote?

Mr. Dunn: I will not vote.

Mr. Logan: By that are we to assume, as you stated earlier, Mr. Steel, that every time Mr. Dunn votes we rest upon the assumption that he is doing so pursuant to directions from Columbia Oil & Gasoline Corporation?

Mr. Steel: Make any assumptions you want to. I think from the Company's standpoint the answers to my queries are entirely satisfactory.

Mr. Logan: A few minutes ago you asked if I would accept that assumption. I would like to know if you and the corporation are now laboring under that assumption. Would you answer my question?

Mr. Steel: I will not answer the question.

Mr. Logan: Then do I understand that the Corporation is taking the position that it will not inquire as to whether or not Mr. Dunn is acting under direction from Columbia Oil & Gasoline Corporation, as the Consent Decree provides, and as the records of this corporation show is limited?

[fol. 665] Mr. Steel: It is taking the position that Mr. Dunn has made his views and his actions entirely clear to the Corporation.

Mr. Logan: Is that the ruling of the Chair?

The Chairman: It is.

Mr. Logan: I appeal from the ruling of the Chair to the floor.

Mr. Hand: If you will permit me to offer an objection, I would like it on the record. I object to any vote being received from Mr. Dunn unless evidence of his authority to vote is presented to the meeting.

Mr. Logan: I appeal from the ruling of the Chair to the floor as to whether or not this corporation should accept Mr. Dunn's vote without proof from him that he is voting in accordance with the directions from Columbia Oil & Gasoline Corporation.

The Chairman: I believe Mr. Dunn has stated that he will vote only on those questions on which he has authority as Trustee. If you would like to have that put to a vote, I shall do it.

Mr. Logan: Yes.

Mr. Steel: What is the motion?

[fol. 666] The Chairman: Appeal from the ruling of the Chair.

Mr. Logan: The precise motion will raise this question——

Mr. Sperry: Why don't you have your appeal read?

Mr. Dunn: Put the motion clearly so we will understand whether we will vote to sustain the Chair or reverse the Chair.

Mr. Logan: Mr. President, I now move that this Corporation refuse to accept any vote of Mr. Gano Dunn on any question unless he first establishes by competent proof that he has been directed by Columbia Oil & Gasoline Corporation to cast his vote in accordance with the way he may cast it due to the fact that this corporation is aware of the limitation upon his powers. That is my motion.

Mr. Hand: I second it.

The Chairman: I rule the motion out of order.

Mr. Logan: I appeal from the ruling of the Chair.

The Chairman: Those in favor of sustaining the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Those against sustaining the Chair say no.

[fol. 667] Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: The Chair is sustained.

Mr. Logan: In that connection I say that the vote of Mr. Dunn must be cast out, because it is obvious, certainly, to the Chair that Mr. Dunn has no directions from Columbia Oil & Gasoline Corporation to vote upon that particular appeal from the Chair's ruling.

The Chairman: I assume you are going to hold another

meeting anyway, so I suggest that we proceed with the report of the judges, if they are ready.

I call for the report of the judges.

Mr. Logan: I ask you, Do you accept the vote of Mr. Dunn on that last appeal from the Chair?

The Chairman: I do.

Mr. Logan: Mr. Dunn, may I ask you whether you were directed by Columbia Oil & Gasoline Corporation to so vote as you just voted?

[fol. 668] Will you answer, Mr. Dunn?

Will the record show that Mr. Dunn refuses to answer?

Mr. Keith: Mr. Chairman—

Mr. Logan: Just a moment, please.

Mr. Keith: The Chairman called for the report of the judges.

Mr. Logan: I will keep the floor if I want to keep it. There is nobody here that can stop me. Don't try to walk over me that way. When I get through talking, you may have the floor. I will proceed orderly. The Chairman is not going to make me stop when I am in the midst of a speech in support of the motion.

Mr. Keith: Shall I proceed, Mr. Chairman?

The Chairman: Yes, proceed.

Mr. Keith: The following is the report of the judges:

Panhandle Eastern Pipe Line Company

First Report of Judges

Dover, Delaware
March 11, 1940.

We, the undersigned, duly appointed Judges to act at the Annual Meeting of the Stockholders of Panhandle Eastern Pipe Line Company, a Delaware corporation, held at [fol. 669] the principal office of the Company, No. 19-21 Dover Green, Dover, Delaware, on March 11, 1940, at 2:00 o'clock P. M., and at all adjournments thereof,

Do Report

that the holders of record of stock of the Company having voting power, in the amounts given below, are present and

qualified to vote at said meeting in person or by proxy as follows:

Name and Address	No. of Shares Preferred Class A	Class B	Common
In Person			
Gano Dunn, Trustee for Columbia Oil & Gasoline Corporation appointed pursuant to Decree dated January 29, 1936 in Cause No. 1699 in Equity in the District Court of the United States for the District of Delaware	100,000	10,000	404,326
Richard B. Hand.			
Arthur G. Logan (Not voting in person but by proxy)			10
Louis F. Sperry			50
Total Present in Person	100,000	10,000	404,386

[fol. 670]

Name and Address	No. of Shares Preferred Class A	Class B	Common
By Proxy			
William G. Maguire and A. Faison Dixon as proxies for Missouri Pipe Line Company			339,275
Leith V. Watkins and Louis F. Sperry as proxies for stockholders as per proxies presented			5,380
William G. Maguire and A. Faison Dixon as proxies for stockholders as per proxies presented			34,122
John J. Morris and Harold B. Howard as proxies for stockholders as per proxies presented			109
Geoffrey R. Mellor as proxy for Howard R. Perry			23
W. C. Tringham as proxy for John R. Perry			170
Total Present and Represented			379,079

Respectfully submitted,

Thomas M. Keith, Leonard G. Hagner, Judges.

[fol. 671] The Chairman: Gentlemen, you have heard the number of shares of the different classes of stock reported by the judges, and that report will be filed.

The next order of business is the election, by cumulative voting by ballot, of nine directors of the Company to serve for one year or until their successors are elected and qualified. In accordance with the Certificate of Incorporation of the Company, as amended to date, seven of the nine directors so to be elected are to be elected by the holders of common stock and two by the Class B preferred stock.

Do I hear any nominations for directors to represent the common stock?

Mr. Dunn: I move to nominate Gano Dunn, Joe D. Creveling, Joseph A. Bower and Robert A. Windmill for the common stock.

Mr. Logan: Mr. Dunn, you have nominated them as Trustee. You are familiar, I assume, with the terms of your Trust which provide in Paragraph 3-a that you shall nominate persons from among persons recommended by the beneficial owner of said stock; namely, Columbia Oil & Gasoline Corporation, in conference and with the advice of the Trustee. I want to ask you if these people you have [fol. 672] nominated have been nominated and if they are persons who were recommended by Columbia Oil & Gasoline Corporation after a conference between you and Columbia Oil & Gasoline Corporation.

Mr. Dunn: They are.

Mr. Logan: May I ask if they recommended any more than the four you have named to you to propose and vote for?

Mr. Steel: Is that with respect to the common stock?

Mr. Logan: Yes.

Mr. Dunn: I don't acknowledge your right to ask me that question.

Mr. Logan: Mr. Dunn, the Trust provides that they shall be persons selected "from among persons recommended." I am now asking you, therefore, whether there were any other persons recommended.

Mr. Dunn: And I say that they are among persons recommended to me by Columbia Oil & Gasoline Corporation.

Mr. Logan: By that do you mean that there were more?

Mr. Sperry: I second the motion.

Mr. Logan: There is no motion.

Mr. Sperry: I second the nominations.

[fol. 673] Mr. Logan: I ask you whether there were any other persons recommended by them to you.

Mr. Dunn: I don't acknowledge your right to ask me that question.

Mr. Logan: Do you have a list that they gave you of persons?

Mr. Dunn: I don't acknowledge your right to ask me that question.

Mr. Logan: You realize, Mr. Dunn, I am asking whether or not the persons you have nominated can qualify due to the express terms of the Trust.

Mr. Dunn: They can.

Mr. Logan: And I am asking you whether or not they are among persons recommended by Columbia Oil & Gasoline Corporation, and if so, who are the other persons?

Mr. Dunn: I say that they are, and I decline to acknowledge your right to ask me further about it.

Mr. Logan: When were they recommended to you?

Mr. Dunn: I decline to answer that question.

The Chairman: Let me get the answer. You say that they are among——

Mr. Dunn: Among persons recommended to me.

[fol. 674] The Chairman: These are persons among a list of names? There were others, but you refuse to say what others?

Mr. Dunn: That is right.

Mr. Logan: Will you produce that list?

Mr. Dunn: You put the word "list" in my mouth. They are among persons recommended to me.

Mr. Logan: Mr. Creveling put the word "list" in your mouth.

The Chairman: I am trying to develop that these are out of more than four names.

Mr. Dunn: That is correct.

Mr. Logan: How many more names?

Mr. Dunn: I decline to answer. That is my affair as Trustee and my responsibility.

The Chairman: Are there any other nominations?

Mr. Logan: I have a right to find out whether they were selected in conference and with the advice of the Trustee.

Mr. Dunn: I say they were.

Mr. Logan: When was that conference?

Mr. Dunn: I decline to answer. You have no right to ask me that question.

[fol. 675] Mr. Logan: What advice did you give to these men?

Mr. Dunn: I decline to answer.

Mr. Logan: Did you recommend or did they talk about Mr. Bierwirth?

Mr. Goodwin: All this is out of order.

Mr. Logan: We have a right to know.

The Chairman: He has answered that, I think. This is out of order. I developed that answer for you, that this is from more than four names.

Are there any further nominations?

Mr. Logan: Mr. President—I address you as President and I am also addressing Mr. Dixon, the Chairman of the meeting—I now move that Article 11 of the By-laws be amended by having the same stricken out and there being substituted in lieu thereof the following:

11. The property and business of this Corporation shall be managed by its Board of Directors, consisting of fourteen persons. Directors need not be stockholders. They shall be elected at the Annual Meeting of Stockholders and each Director shall be elected to serve for one year or until his successor shall be elected and shall qualify. If the number of directors shall be increased by vote of the Board, the [fol. 676] Board may elect new directors to complete the membership in the Board and such directors so elected shall hold office until the next annual meeting of the stockholders. The directors may fill vacancies created by resignations, death, or refusal to serve of any member elected by the stockholders.

And I move that Article 42 be stricken out.

Mr. Hand: I second the motion.

The Chairman: I rule that that motion is out of order in view of the express provision as to how to amend the By-laws as provided in Article 42.

Mr. Logan: I have to point out to you, Mr. Creveling, that Section 12 of the Delaware Corporation Law gives the right, regardless of what the Directors may have put in the By-laws—with respect to amendment, Section 12 gives the right to the stockholders to amend the By-laws, and cases support that.

The Chairman: The motion is out of order.

Mr. Logan: You say the motion is out of order?

The Chairman: Yes.

Mr. Logan: I appeal from the ruling of the Chair.

The Chairman: Those who support the Chair say "aye".

[fol. 677] Mr. Dunn: Aye.

The Chairman: Contrary?

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellow: No.

Mr. Tringham: No.

The Chairman: Any further nominations?

Mr. Logan: Now, Mr. Dunn, I again ask you to show proof of direction from Columbia Oil & Gasoline Corporation to support the Chair in its ruling that it will not entertain a motion to amend the By-laws.

Mr. Dunn: I don't recognize your right to make that request.

Mr. Logan: I ask the Chair to declare that the appeal was sustained, because the only one voting to sustain the Chair was Mr. Dunn, and he has shown no proof whatsoever that he has the direction of Columbia Oil & Gasoline Corporation in support of his vote, and therefore his vote cannot be accepted.

The Chairman: The Chair says that the appeal from the [fol. 678] ruling of the Chair was lost because the majority of the stockholders present voted to sustain the Chair.

Are there any further nominations?

Mr. Dunn: I move the nominations be closed.

Mr. Sperry: I second the motion.

Mr. Logan: I have a motion on the floor. I moved that the number of directors of this corporation be fixed at fourteen in view of the fact the by-laws do not fix the number. The by-laws provide for more than three, without fixing the precise number. Therefore, I move that the number of directors be fixed at fourteen.

Mr. Hand: I second the motion.

The Chairman: I rule that that motion is out of order on the ground that the Board has the right to fix the number of directors and not the stockholders.

Mr. Logan: I take an appeal again from the ruling of the Chair.

The Chairman: Those in favor of supporting the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary?

Mr. Logan: No.

[fol. 679] Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

Mr. Logan: Again I request that the Chair reject the vote of Mr. Gano Dunn, as he has failed to show that he has been directed by Columbia Oil & Gasoline Corporation to vote in accordance with his vote.

The Chairman: Any further nominations for directors of the common stockholders?

Mr. Logan: There are. We nominate W. G. Maguire, A. Faison Dixon, Robert J. Bulkley.

Mr. Maguire: I second the nominations.

Mr. Logan: I also nominate Joseph Bodell, David Boyd-Smith, Hubert E. Howard, Goeffrey L. Mellor, and W. C. Tringham.

The Chairman: Are there any other nominations for common stockholders?

I assume, Mr. Maguire, that you second those nominations?

Mr. Maguire: Yes.

[fol. 680] Mr. Dunn: I move the nominations be closed.

Mr. Sperry: I second the motion.

The Chairman: Those in favor that the nominations be closed for directors of the common stockholders say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary, no?

The motion is carried.

Mr. Secretary, will you please distribute the ballots?

(The meeting proceeded to vote.)

The Chairman: While the Inspectors are tallying and counting the ballots may we not proceed with the Directors for the Class B preferred stock? Are there any nominations?

Mr. Dunn: I nominate Mr. Walter Mortland and Mr. Richard C. Patterson, Jr.

Mr. Logan: We object to anybody being elected by the Class B stock on the grounds that it is an invalid and illegal issue of stock contrary to the anti-trust laws and contrary to the decree of Judge Nields of January 29, 1936, in the proceedings in which Mr. Dunn was appointed Trustee.

May I have a ruling on my objection?

The Chairman: This is the same objection that has been [fol. 681] raised, the question of legality of the Class B stock, and every stockholders' meeting that I attended, and the Chair overrules the objection.

Mr. Logan: I appeal from the ruling of the Chair's refusing to entertain my motion that the Corporation should not proceed to elect two directors through this stock. I appeal to the floor.

The Chairman: You have heard the appeal to the floor from the ruling of the Chair. Those supporting the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Those not supporting the Chair say "no".

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: The Chair is supported.

Mr. Logan: Again I would like to point out that Mr. Dunn is the sole one supporting the Chair, and I want to ask you, Mr. Dunn, if you received directions from Columbia [fol. 682] Oil & Gasoline Corporation directing you to vote?

Mr. Dunn: I don't recognize that question.

The Chairman: That question, Mr. Logan, I think has been answered by Mr. Dunn.

Mr. Hand: I object to the vote being taken in the absence of any authority to show that Mr. Dunn does have the authority to vote the stock.

The Chairman: Will you record the objection, please? Are there any other nominations for the Class B stock?

Mr. Dunn: I move the nominations be closed.

Mr. Sperry: I second the motion.

The Chairman: All those in favor say "aye".

Mr. Dunn: Aye.

Mr. Sperry: Aye.

The Chairman: Contrary, no.

The motion is carried.

The Secretary will distribute the ballots.

Mr. Logan: Please take the negative votes, Mr. Creveling.

The Chairman. Those voting no say "no" so the Secretary can record it.

Mr. Logan: No.

[fol. 683] Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

Mr. Logan: Mr. Dunn, will you state whether or not the two people you have nominated are persons who were recommended by Columbia Oil & Gasoline Corporation?

Mr. Dunn: They are.

Mr. Logan: Will you state whether they were recommended in a conference and with your advice?

Mr. Dunn: They were.

Mr. Logan: Will you state when that conference took place and who was present?

Mr. Dunn: I don't recognize your right to ask me that question.

The Chairman: I rule that question out of order.

Mr. Logan: Will you state whether Mr. Bierwirth's name was mentioned at that conference?

Mr. Dunn: I will say I don't recognize your right to ask me that question.

Mr. Logan: Will you state whether it was your suggestion or Columbia Oil & Gasoline Corporation's sugges-
[fol. 684] tion that Mr. Bierwirth be dropped off the Board at this time?

Mr. Dunn: Same objection.

Mr. Logan: Were you in accord with Columbia in dropping Mr. Bierwirth?

Mr. Dunn: Same objection.

Mr. Logan: You refuse to answer?

Mr. Dunn: Same objection.

Mr. Logan: Do you have any objection to Mr. Bierwirth?

Mr. Dunn: I don't recognize your right to ask me that question.

Mr. Logan: You have nominated in place of Mr. Bierwirth another man. Was he your suggestion or Columbia's?

Mr. Dunn: I have nominated two men.

Mr. Logan: Which one have you nominated in Mr. Bierwirth's place?

The Chairman: I call your attention to the fact that Mr. Bierwirth was not a director elected by the Class B stock previously.

Mr. Logan: Was he selected by the common stock last year?

The Chairman: That is correct.

[fol. 685] Mr. Logan: You elected him as one of the Columbia nominees last time, did you not?

Mr. Dunn: The records show that.

Mr. Logan: Mr. Dunn, he is the only one of the Columbia nominees elected last time who has been dropped off the Board. Will you state in this conference you had with Columbia at whose suggestion it was that he be dropped off the Board?

Mr. Dunn: I don't recognize your right to ask me that question.

Mr. Logan: As a matter of fact, it was your recommendation, was it not?

Mr. Dunn: I don't recognize your right to imply that.

The Chairman: As I understand, Mr. Logan, trying to get on with this and not trying to defeat anything you may have in mind, Mr. Dunn has stated that his nominees were chosen from more than the number of names he has nominated.

Is that a correct statement, Mr. Dunn?

Mr. Dunn: That is correct.

The Chairman: Will you pass the ballots on behalf of the B stock?

[fol. 686] Mr. Logan: Mr. Creveling, may I offer as a part of the record of this meeting a copy of the decree which sets up the Trust under which Mr. Dunn is acting?

The Chairman: File that as part of the records of this stockholders' meeting, please.

Mr. Logan: If any of the rulings or any of the votes that you made heretofore were made either with the thought or belief that the Trust did not state provisions I previously quoted, or if any of the rulings or any of the votes were made without knowledge of the terms of the Trust, I would like to have the person who made the ruling or the person who cast the vote so state at this time, because otherwise if neither Mr. Creveling, who has made the rulings, or Mr. Dunn, who has done all the voting, and counsel who have advised Mr. Creveling and Mr. Dunn, intend in the future to take the position that the terms of the Trust are not before the meeting, or were not known to the meeting, they should so state now or forever hold their peace.

Mr. Steel: You read them into the record two or three times, haven't you?

The Chairman: Will the Inspectors report on the common stock directors?

[fol. 687] Panhandle Eastern Pipe Line Company

Second Report of Judges

Dover, Delaware
March 11, 1940

We, the undersigned, duly appointed Judges at the Annual Meeting of Stockholders of Panhandle Eastern Pipe Line Company, a Delaware corporation, held at the principal office of the Company, No. 19-21 Dover Green, Dover, Delaware, on March 11, 1940, at 2:00 o'clock P. M., and at all adjournments thereof,

Do Report

that, we having taken an oath faithfully and impartially to execute the duties of Judges at said meeting, and having received and counted the votes cast for Directors to represent the Common Stock of said Company, that the votes cast thereat by ballot for such Directors, each to serve for one year or until his successor is elected and shall qualify, were as follows:

Director	Votes Received
Gano Dunn	712,951
Joe D. Creveling	713,714
Joseph A. Bower	712,950
Robert C. Winmill	712,950
William G. Maguire	805,380
W. C. Tringham	1,421
[fol. 688] A. Faison Dixon	805,380
Robert J. Bulkley	805,380
Joseph Bodell	50,000
David Boyd Smith	50,000
Herbert E. Howard	50,000
Geoffrey R. Meller	63,779

In Witness Whereof, we have hereunto affixed our respective signatures, this 11th day of March, 1940.

Respectfully submitted, Thomas M. Keith, Leonard G. Hagner, Judges.

The Chairman: Of the twelve directors nominated, the following seven have been duly elected:

Gano Dunn, Joe D. Creveling, Joseph A. Bower, Robert C. Winmill, William G. Maguire, A. Faison Dixon and Robert L. Bulkley.

Mr. Logan: Mr. Creveling, I object to your statement that only the seven receiving the highest number of votes were elected, and request that you declare that all twelve for whom votes were cast were elected directors, as twelve [fol. 689] is the number to be elected at this meeting by the common stock, not seven as you have stated.

The Chairman: You request that?

Mr. Logan: Yes.

The Chairman: I refuse the request.

Mr. Logan: I appeal to the floor from the ruling refusing to name as directors Messrs. Bodell, David Boyd-Smith, Howard, Mellor, and Tringham, and ask that the matter be referred to the floor.

The Chairman: You have heard the appeal from the ruling of the Chair. Those supporting the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary?

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: Have you the report on the Class B Preferred stock?

Mr. Keith: I can report with regard to the report by the Inspectors of Election for the Class B stock that there [fol. 690] were 10,000 votes cast for Walter G. Mortland and 10,000 votes for Richard C. Patterson, Jr.

Mr. Logan: I object to the Chair's receiving the report for the reasons I stated heretofore.

The Chairman: I declare Walter G. Mortland and Richard C. Patterson, Jr. elected by the Class B Preferred stock as directors of the Corporation.

Mr. Logan: I appeal to the floor from the ruling of the Chair turning down my objection to the receipt of this report.

The Chairman: You have heard the appeal from the ruling of the Chair. Those supporting the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary, no.

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: The Chair is sustained.

The next order of business, gentlemen, is that I would [fol. 691] like to have a resolution, if it is agreeable, to hold the organization meeting of the new Board on March 13, 1940, at three-thirty o'clock.

Mr. Logan: I would like to make a motion. You are now proceeding to new business.

I move that By-law 22 be stricken and that there be substituted in lieu thereof the following:

The officers of the corporation shall be chosen by the stockholders and shall be a President, one or more Vice-Presidents, a Secretary and a Treasurer, and shall hold their respective offices for the term of one year and until their successors are duly elected and have qualified. Any two offices may be held, and the duties performed, by one and the same person, except that the offices of President and Secretary must at all times be held and filled by two different persons.

I move that Article 24 of the By-laws be stricken and there be substituted in lieu thereof the following:

The salaries of all officers of the corporation shall be fixed by the stockholders. The officers of the corporation shall hold office until their successors are chosen and qualified in their stead. No officer or agent elected by [fol. 692] the stockholders may be removed except for cause.

And I move that Article 42 of the By-laws be stricken.

Mr. Hand: I second the motion.

The Chairman: The motion is out of order. That is the ruling of the Chair because the provisions of Article 42 providing the way in which amendments shall be made has not been complied with.

Mr. Logan: I call the Chair's attention to Section 12 of the Delaware Corporation Laws, which authorizes and allows the amendment which I just proposed, and ask that the Chair reverse its ruling.

The Chairman: The ruling still stands.

Mr. Logan: I appeal from the two rulings, the original ruling and the refusal to modify the ruling.

The Chairman: You have heard the rulings of the Chair. Those in support of the Chair say "aye".

Mr. Dunn: Aye.
The Chairman: Contrary, no.
Mr. Logan: No.
Mr. Maguire: No.
Mr. Dixon: No.
Mr. Hand: No.
[fol. 693] Mr. Mellor: No.
Mr. Tringham: No.
Mr. Logan: Mr. Dunn, may I again ask whether you have direction from the Columbia Oil & Gasoline Corporation to vote as you just voted?
Mr. Dunn: I don't recognize your right to ask me that question.
Mr. Logan: I assume, then, you did not have any such direction?
Mr. Dunn: I don't recognize the validity of your assumption.
Mr. Logan: My assumption is true, is it not, Mr. Dunn?
Mr. Dunn: I don't recognize your implication.
Mr. Logan: My assumption is still true.
The Chairman: I think you have gone far enough.
Mr. Logan: I now move that the following officers be elected to serve until the next Annual Meeting of Stockholders and until their successors are duly chosen, at salaries to be the same as similar officers are now receiving:
President, W. G. Maguire; Vice-President, Girard J. Neuner; Secretary Leith V. Watkins; Treasurer, W. C.
[fol. 694] Tringham.
Mr. Hand: I second the motion.
The Chairman: I rule that the motion is out of order in accordance with Section 22 of the By-laws, which provides for the method of electing officers of the Corporation.
Mr. Logan: In view of the fact that we just amended the By-laws and in view of the fact further that the stockholders have vested within them the power to elect officers, I ask that the Chair reverse its ruling.
The Chairman: The ruling stands.
Mr. Logan: I appeal from the ruling and refusal to reverse the ruling.
The Chairman: Those in favor of supporting the Chair in both rulings say "aye".
Mr. Dunn: Aye.
The Chairman: Those opposed say no.
Mr. Logan: No.

Mr. Maguire: No.
Mr. Dixon: No.
Mr. Hand: No.
Mr. Melbor: No.
Mr. Tringham: No.

Mr. Logan: Again, Mr. Dunn, may I ask you if you [fol. 695] were directed by Columbia Oil & Gasoline Corporation to vote as you just voted?

Mr. Dunn: The same answer as before.

Mr. Logan: The same result if I pursue the subject, I suppose, Mr. Dunn?

Mr. Dunn: The same result.

Mr. Hand: Mr. Chairman, I make the following motion:

Whereas by letter dated January 15, 1940 to this corporation, its directors and officers, Missouri-Kansas Pipe Line Company, a substantial stockholder of this corporation, proposed and demanded that certain action be taken by this corporation; and

Whereas, this corporation, its officers and directors have failed and neglected to comply therewith in any respects; and

Whereas it is the sense of this meeting that the actions set forth in said letter, a copy of which was ordered to be made a part of the minutes of the Board of Directors of this corporation of January 17, 1940, constitute causes of action, which are assets of this corporation and should be pursued;

Now, Therefore, be it resolved that this corporation [fol. 696] take the actions set forth and decribed in paragraphs 1 to 6 inclusive of said letter of January 15, 1940; and

Be It Further Resolved that this corporation employ and hereby do employ Robert J. Bulkley, of Cleveland, Ohio, Russell Hardy, of Washington, D. C., and Arthur Logan, of Wilmington, Delaware, as its attorneys to undertake said proceedings by filing such suits in such Courts and taking such appeals with respect thereto as they in their judgment deem necessary and advisable; and

Be It Further Resolved that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services.

Mr. Maguire: I second the motion.

Mr. Logan: Question.

Mr. Hand: I ask that those preambles and resolutions be adopted by this meeting.

The Chairman: You have heard the motion that has been read and seconded. Are there any comments?

Mr. Logan: Question. I would say this, Mr. Creveling: I don't think it is necessary to have an extended debate on them. Everyone here who is qualified to vote is familiar with the matters and facts set forth in the motion, and [fol. 697] there can't be any need of discussion at this time. Everyone is fully familiar with it all.

The Chairman: Those in favor of the resolution as read by Mr. Hand and seconded by Mr. Maguire say "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

The Chairman: Contrary, no.

Mr. Dunn: No.

The Chairman: The motion is lost.

Mr. Logan: Mr. Dunn, may I ask if you were directed by Columbia Oil & Gasoline Corporation to vote against that resolution?

Mr. Dunn: I don't recognize your right to ask the question.

Mr. Hand: May I have noted on the record that I object to the vote of Mr. Dunn unless in compliance with his Trust and evidence of compliance with his Trust be shown here. By that I mean, some evidence to show us that he is acting [fol. 698] in accordance with the wishes of his principal when he votes as he does on this question.

Mr. Logan: I must point out at this time that this motion is one for this corporation to bring law suits against Columbia Oil & Gasoline Corporation. Mr. Dunn has no right to vote on that motion unless he is directed by Columbia Oil & Gasoline Corporation. If he is voting because he was directed by Columbia Oil & Gasoline Corporation to vote against it, this corporation should not receive his vote. If he was not, he has no right to vote, and I demand that the Chair reject his vote and declare the resolutions adopted.

The Chairman: The Chair declares that the resolution was lost.

Mr. Logan: I take an appeal from the ruling of the Chair.

The Chairman: Those supporting the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary, no.

Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

[fol. 699] Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: The Chair is supported.

Mr. Hand: Mr. Chairman, I have another motion and preamble.

Whereas an action was filed this day in the United States District Court for the District of Delaware by Missouri-Kansas Pipe Line Company and Lucille Dammann, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, Michigan Gas Transmission Corporation, Gano Dunn and this corporation, asserting in part derivative claims of this corporation against the said other defendants; and

Whereas said complaint asserts in part some of the causes of action which Missouri-Kansas Pipe Line Company demanded this corporation take in and by its letter of January 15, 1940, which is part of the minutes of this corporation of January 17, 1940;

Now, Therefore, Be It Resolved, that this corporation appear in said proceeding by counsel and ask leave to be made a party plaintiff to assert its rights and prosecute the [fol. 700] same; and

Be It Further Resolved that this corporation prosecute its rights in such action with all due diligence; and

Be It Further Resolved that this corporation employ and hereby do employ Robert J. Bulkley, of Cleveland, Ohio, Russell Hardy, of Washington, D. C., and Arthur Logan, of Wilmington, Delaware, as its attorneys to take action provided for herein; and

Be It Further Resolved that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services.

Mr. Maguire: I second the motion.

The Chairman: I think in view of the fact that the Bill of Complaint was filed today it might be a little premature,

I don't know; but the motion has been made and seconded. Are there any further comments?

Those in favor of the motion say "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

[fol. 701] Mr. Tringham: Aye.

The Chairman: Contrary, no.

Mr. Dunn: No.

The Chairman: The motion is lost.

Mr. Logan: May I point out to the Chair that Mr. Dunn is one of the defendants in the law suit we are now talking about and which the motion contemplates and which would have this Corporation assert its rights which are antagonistic to those of Mr. Dunn. Mr. Dunn in his personal capacity has no right to vote against the motion, and if he is voting against the motion through the direction from Columbia Oil & Gasoline Corporation, also defendants, he again has no right to vote. If he is voting without the direction of Columbia Oil & Gasoline Corporation, it is a third reason he has no right to vote, and I demand that the Chair refuse to accept his vote and declare the resolution passed.

The Chairman: The resolution is lost.

Mr. Logan: I appeal from that ruling.

The Chairman: You have heard the appeal. Those in support of the Chair say "aye".

Mr. Dunn: Aye.

The Chairman: Contrary?

[fol. 702] Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: I declare the Chair sustained.

Mr. Hand: I ask the adoption of the following resolution:

Be It Resolved that the Board of Directors of this corporation be and hereby are instructed to forthwith redeem the outstanding Class A $6.00 Participating Preferred Stock of this Company, and for that purpose to use such portion of the cash surplus of the corporation as they deem advisable, the balance to be raised by the Company through

the sale of bonds, debentures, through bank loans or otherwise.

Mr. Maguire: I second the motion.

The Chairman: You have heard the Resolution and its second. Are there any comments on that?

Mr. Logan: I may say this: The Board of this corporation has recognized in the past the advisability of redeeming its Class A Preferred stock, as is reflected in the [fol. 703] minutes of the Board, where the Board proposed that it be redeemed, but by the issuance of a new class of preferred stock. This action of the Board was blocked by Mr. Gano Dunn following the directions of Columbia Oil & Gasoline Corporation. This proposal is that the stockholders instruct the Board to proceed to redeem the stock as the Board has indicated is desirable and advisable from a corporate standpoint in a means and method whereby neither Mr. Dunn nor Columbia Oil & Gasoline Corporation can block the redemption, because it calls for the redemption through cash surplus or through funds to be raised by the directors, and it does not call for an amendment to the certificate which would give Mr. Dunn a right to veto any proposal and defeat the proposal. This can be done by Directors entirely separate from any vote of Mr. Dunn's except in his capacity as one member of the Board of Directors, and can be done separately from any influence of Columbia Oil & Gasoline Corporation if the Directors will act without that influence.

That should be pointed out before this vote is taken. Mr. Dunn should have that fact pointed out to him before he votes, because we again will assume that if he votes against this he is doing so under the direction of Columbia Oil & Gasoline Corporation, whereas we take the position that [fol. 704] if he is voting the stock standing in his name in a free and independent way, he will not vote against this resolution; whereas if he is voting under the control and domination of Columbia Oil & Gasoline Corporation at all times, he will naturally vote against this resolution.

The Chairman: Are there any other comments on the Resolution?

Do you have in mind the Resolution now? It is as follows:

Be It Resolved that the Board of Directors of this corporation be and hereby are instructed to forthwith redeem the outstanding Class A $6.00 Participating Preferred

Stock of this Company, and for that purpose to use such portion of the cash surplus of the corporation as they deem advisable, the balance to be raised by the Company through the sale of bonds, debentures, through bank loans or otherwise.

Mr. Logan: I would like the record to show that a written copy of that resolution was handed to Mr. Dunn at the time it was proposed, as was done in connection with the prior resolutions. He was given written copies so there could be no question or doubt as to whether or not he understood the full purport thereof.

[fol. 705] The Chairman: Any further comments?

Those in favor say "aye."

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

The Chairman: Contrary, no.

Mr. Dunn: No.

The Chairman: The Resolution is lost.

Mr. Logan: I ask that the Chair reject the vote of Mr. Dunn for the reasons I stated previously. This corporation is not bound to accept a vote which is either dominated and controlled by Columbia or which is obviously for the benefit of Columbia Oil & Gasoline Corporation.

The Chairman: Objection overruled.

Mr. Logan: I appeal from both the original ruling and the ruling on the request.

The Chairman: Those in support of the Chair for both, say "aye."

Mr. Dunn: Aye.

The Chairman: Contrary, no.

[fol. 706] Mr. Logan: No.

Mr. Maguire: No.

Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

Mr. Mellor: Mr. Creveling, isn't it a fact that quite recently the Board of Directors of this Company did authorize the recalling of this preferred stock and its retirement and replacement by another issue?

The Chairman: You will have to ask the Secretary for the record on that.

The Secretary: Not that I recall.

The Chairman: The records will show.

Mr. Maguire: The Board voted it advisable to do so.

The Chairman: That is correct. If you change it to that, Mr. Mellor——

Mr. Mellor: I will.

The Chairman: The Board did vote that it was advisable to do so.

Mr. Maguire: And they asked the stockholders at that [fol. 707] time, and we said "yes," we would.

The Chairman: If I recall, specifically, I thought that was the action of the Board.

Mr. Maguire: And Mr. Dunn asked to be recorded as not voting.

Mr. Mellor: Could I ask Mr. Dunn another question? I should like to ask whether or not during the year nineteen thirty-seven it did not come to his knowledge that negotiations were proceeding through the medium of certain banking houses in New York to underwrite the common stock now held by Columbia Oil & Gasoline Corporation, and that when that knowledge came to his attention he discussed the matter with the Columbia interests and advised them himself that it was not in the interests of this corporation, that is, the Panhandle Eastern, to accept a bid which the banks intended to offer, and that as a result of Mr. Gano Dunn's personal recommendation to the Columbia interests, the Columbia interests wrote to the bankers concerned and asked them to withdraw any further negotiations.

The Chairman: You are asking that question of Mr. Dunn?

Mr. Dunn: I would like to have the question read again, [fol. 708] because it is so long and has so many branches to it I can't carry it all in my mind.

Mr. Mellor: I am asking you whether some time in nineteen thirty-seven it was not brought to your attention that certain leading bankers in New York were prepared to purchase or to underwrite the common stock now held by Columbia Oil & Gasoline Corporation in this Company, and that on your being acquainted with the fact that they were prepared to underwrite the stock you did not go to the Columbia interests and tell them of your own initiative

that it was not to the interests of the Panhandle Eastern Corporation to have that stock distributed by private bankers, and that as a result of your conversations Columbia wrote to the bankers and asked them to withdraw from further negotiations?

Mr. Dunn: Mr. Mellor, your question is so long that I cannot answer it. If you will break it up I will try to answer it.

Mr. Mellor: I will break it up.

Mr. Dunn: If you will write me a letter and put it in writing, I will try to answer it.

Mr. Mellor: Were you informed during nineteen thirty-[fol. 709] seven that certain banking interests in New York were prepared to underwrite the common stock of Panhandle Eastern now owned by Columbia Oil & Gasoline Corporation?

Mr. Dunn: No, I was not.

Mr. Mellor: At no time during nineteen thirty-seven?

Mr. Dunn: At no time during nineteen thirty-seven nor any other time.

Mr. Mellor: Nor any other time? Thank you.

The Chairman: One of the other specific purposes for which this meeting has been called was to consider and act upon a certain amendment to the Certificate of Incorporation of the Company whereby the seventh paragraph of sub-division 1 of Section B of Article Fourth will be amended so that it will be possible to declare or pay participating dividends during any year if during such year any additional shares of common stock were issued, and that such amendments had been declared advisable by the Board of Directors of this Company at its meeting held February 27, 1940.

The proposal on which the stockholders will be asked to vote is this:

"Resolved that the seventh paragraph of Subdivision 1 of Section B of Article Fourth of the Certificate of In-[fol. 710] corporation, as heretofore amended, reading as follows:

"After the requirements in respect of the preferential dividends upon the Preferred Stock of both classes, as hereinbefore set forth, to the end of the then current quarterly dividend period for said stock shall have been met, and after the provisions of the immediately preceding

paragraph shall have been complied with, and not otherwise, the holders of the Common Stock shall be entitled to receive, out of the remaining net profits or net assets of the corporation applicable to dividends, dividends at a rate not to exceed One Dollar and Fifty Cents ($1.50) per share per annum, before any participating dividends shall be declared or paid upon or set apart for the Class A Preferred Stock and the Common Stock as hereinafter provided."

This shall be further amended to read as follows:

"After the requirements in respect of the preferential dividends upon the Preferred Stock of both classes, as hereinbefore set forth, to the end of the then current quarterly dividend period for said stock shall have been met, and after the provisions of the immediately preceding par- [fol. 711] agraph shall have been complied with, and not otherwise, the holders of the Common Stock shall be entitled to receive, out of the remaining net profits or net assets of the corporation applicable to dividends, dividends at a rate not to exceed One Dollar and Fifty Cents ($1.50) per share per annum, before any participating dividends shall be declared or paid upon or set apart for the Class A Preferred Stock and the Common Stock as hereinafter provided. In the event of the issue of additional Common Stock during any year all such dividends paid on the Common Stock in such year prior to the issue of such additional Common Stock and all such dividends declared and payable to holders of record of Common Stock on a date in such year prior to such additional issue, shall be deemed to have been paid on the additional Common Stock so issued."

That is a long resolution. Is there anyone here that does not know the intent of the Resolution?

Mr. Logan: Mr. President, I think I understand the intent of the Resolution, although I am not sure, and in order to clarify my own mind I would like to ask you several ques- [fol. 712] tions. First, who proposed that Resolution to the Board?

The Chairman: What do the records show or that?

The Secretary: The records of the Board, I believe, show that the proposal was made on the basis of advice received from counsel.

Mr. Logan: From what counsel?

The Secretary: Company counsel, general counsel for the Company, Mr. Edward M. Goodwin.

Mr. Logan: Mr. Goodwin is present.

Mr. Goodwin, was that resolution made pursuant to your recommendation?

Mr. Goodwin: Well, my advice was asked as to whether under the circumstances—late last year—participating dividend could safely be paid in view of the fact that only fifty cents a share had been paid on the 80,000 shares outstanding, and I advised that there was a legal doubt about it and that the appropriate remedy for the situation would be an amendment to the Certificate of Incorporation, and I advised the Directors that until that was done they should not declare any participating dividends. I gave no advice as to whether they should do it or not.

Mr. Logan: You mean last year when the situation arose [fol. 713] you gave your opinion then?

Mr. Goodwin: That is right.

Mr. Logan: That they should not pay the participating feature at that time?

Mr. Goodwin: Yes.

Mr. Logan: Now, Mr. Goodwin, the proposal has been to amend the Certificate——

Mr. Goodwin: I had nothing to do with that. I have been abroad ever since the early part of January.

Mr. Logan: Now, Mr. Watkins, Mr. Goodwin was not the responsible one, so could you tell us who was?

The Secretary: Shall I quote you from the minutes?

Mr. Logan: Yes.

The Secretary: Quoting from the minutes of a special Directors' Meeting of Panhandle Eastern Pipe Line Company held at 3 o'clock, P. M., on Tuesday, February 27, 1940, under the caption "Amendment of the Certificate of Incorporation" there appears the following:

"The Chairman stated that he had been advised by this company's general counsel that under the provisions of the company's existing Certificate of Incorporation it was impossible to declare or pay participating dividends during any year if during such year any additional shares of com- [fol. 714] mon stock were issued, and that in order to cure this situation and in the best interests of the company it would be necessary to amend the Certificate of Incorporation of this company. He submitted to the meeting a pro-

posed form of amendment of the Certificate of Incorporation of the company to carry into effect the proposed amendment, a copy of which is included in the minutes."

Mr. Logan: Mr. Chairman, apparently you presented a proposed amendment, and Mr. Goodwin tells us he did not prepare it. Will you please tell us who prepared it?

The Secretary: I prepared the proposed amendment.

Mr. Logan: Did you consult with counsel in doing so?

The Secretary: Yes, indeed.

Mr. Logan: What counsel did you consult?

Mr. Goodwin: He consulted with my office, during my absence.

Mr. Logan: Whom did you consult with?

The Secretary: Mr. William L. Glen, associate of Mr. Goodwin.

Mr. Logan: Did you consult with anyone else?

The Secretary: Any other attorney?

Mr. Logan: Yes.

The Secretary: Not that I recall.

[fol. 715] Mr. Logan: Will you think clearer and tell us whether you did?

The Secretary: I don't recall any other.

Mr. Logan: Did you talk to Mr. Dunn about it?

The Secretary: Not at all.

Mr. Logan: Never discussed it with him at all?

The Secretary: I don't recall any conversation with Mr. Dunn with respect to the form of amendment of this Certificate of Incorporation.

Mr. Logan: I am talking about the fact of having the amendment. Whose suggestion was that?

The Secretary: The President of the Corporation instructed me to prepare it.

Mr. Logan: Now we get back to you, Mr. Creveling. Who was the one that suggested to you that you proceed with the amendment.

The Chairman: As I recall, no one did. I presented this matter to the Board for its determination as to whether or not they wanted to remedy this thing which had been discovered in December, as I recall, without recommendation, but simply in order to allow the Board to express its views on it.

Mr. Logan: You presented it in this printed form, did [fol. 716] you not?

The Chairman: He just read it to you from the minutes.

Mr. Logan: I mean, the definitive form it is in?

The Chairman: That is right.

Mr. Logan: Before that day, then, you did consider it and you asked Mr. Watkins to go out and have a proposed amendment prepared?

The Chairman: That is correct.

Mr. Logan: Whom did you talk to and whom did you consult with as to the advisability of doing that?

The Chairman: No one.

Mr. Logan: This all comes out of your own brain?

The Chairman: Don't give me credit with having too much brains. I did this following the December opinion of our counsel in order to permit the Board of Directors to express its views on it.

Mr. Maguire: Mr. Creveling, may I just refresh your recollection? In the past few months there has been a financial committee, of which I was a member. We consulted bankers and they made up a proposition. The last meeting that I recollect I attended with the Finance Committee was on January 18. Certain assurances were given [fol. 717] me, among them being that this section would be as is and there would be no change. Then we get down to about a week ago——

Mr. Dunn: You mean that there would be no amendment to the Certificate of Incorporation?

Mr. Maguire: That is correct.

The Chairman: Who made that statement to you?

Mr. Maguire: You or Mr. Sperry.

The Chairman: I deny that.

Mr. Maguire: Let me carry on. It is possible I may have misunderstood you. It was also told us at the time, just to refresh your recollection a little more, that the surplus in the new indenture would be practically the same as in the old one, except as of January 1, 1936, I think.

The Chairman: December 31, 1936.

Mr. Maguire: I was away and I got back and found out that both of those items had been changed. I asked the bankers who insisted on it, and they said, "Well, you go ask your friend Creveling."

So then we did have a Finance Committee meeting, which I attended, which was about a week or ten days ago. Isn't that correct?

The Chairman: I don't recall when it was.

[fol. 718] Mr. Maguire: And it was specifically stated in that meeting—I have a memorandum made of it at the time—that this change was made because Columbia demanded it. Do you recollect that?

The Chairman: Would you like to have me make a statement on this, Mr. Maguire?

Mr. Maguire: Yes, I wish you would.

The Chairman: When we were working on the conditions to go in a mortgage for some new financing, various terms were discussed. The matter was taken up at a Board meeting and it was stated that the indenture as being drawn by the management with the bankers, amongst other things, placed the date of freezing the reserves at the—freezing the surplus at the same point that was in the indenture under which we are now operating.

Mr. Maguire: That is right.

The Chairman: That was in the original draft of our mortgage, and that fact had to be approved by the majority of the stockholders before it could become a final term. That was presented to Mr. Dunn, and Mr. Dunn—or indirectly Mr. Dunn, because he immediately after this made a trip to Haiti, and Mr. Sperry and Mr. Glen of Mr. Goodwin's office pursued the matter in his absence and received [fol. 719] the reply to the effect that that term of the indenture would not be approved by the majority stockholder.

Mr. Logan: You are talking about Columbia Oil, are you not, at this time?

Mr. Sperry: Pardon me, I don't think that is relevant to this discussion at all. This is an entirely different question.

The Chairman: We might as well get this clear.

Mr. Logan: But when you were talking about Mr. Sperry and Mr. Glen receiving word that the majority stockholder would not vote for it, you meant Columbia Oil?

Mr. Dunn: This is an amendment to the Certificate of Incorporation. This is a different thing.

Mr. Logan: Please answer that question. You meant the Columbia Oil?

The Chairman: That is correct.

Mr. Logan: And when you talk about the majority stockholder you mean the Columbia Oil?

The Chairman: I mean Gano Dunn, as the stockholder of record.

Mr. Logan: When Gano Dunn was in Haiti who told you [fol. 720] what you just stated was told?

The Chairman: You will have to ask Mr. Sperry about that. He is here.

Mr. Logan: Who is the one that said that, Mr. Sperry? With whom did you consult about it?

Mr. Sperry: Mr. Glen and I consulted with Mr. Wilson. He was Vice-President of the Columbia Oil & Gasoline Corporation, and Mr. Alley, who was Vice-President of the Columbia Oil & Gasoline Corporation.

Mr. Logan: We finally got Columbia Oil & Gasoline Corporation's name out.

Mr. Maguire: Of course, we do own a little stock in this outfit and represent about 1200 other stockholders, as evidenced by this today. We didn't know of this change in the indenture until Arthur Dean told me about it the day I was asked to vote on it. Do you recall that? I asked him the categorical question, "Did Columbia insist on it?

He said, "They did."

The bankers would not tell me who insisted on it.

Mr. Sperry: I suggest you put the question. I think this discussion is not pertinent to the matter we have under discussion.

[fol. 721] Mr. Logan: No, this discussion got away. Let us get back to what I was talking about, which is this specific change in the Certificate of Incorporation and concerned with this participating preferred stock. We had gotten to the point, Mr. Creveling, where you had appeared at a Board meeting with the definitive proposed amendment.

The Chairman: That is correct.

Mr. Logan: And we had gotten to the point that previously to that you had asked Mr. Watkins to have it prepared, and he had it prepared in Mr. Goodwin's office. What I was pursuing at the time was whether or not you ever talked with any Columbia representatives.

The Chairman: The answer very definitely is no.

Mr. Logan: Did Mr. Dunn ever state to you that this amendment should be made?

The Chairman: No.

Mr. Logan: Did you ever discuss this with Mr. Dunn?

The Chairman: I don't recall that I did, Mr. Logan. I can answer your question this way: If I did, any suggestion that he made had no bearing on my asking Mr. Watkins

to prepare the amendment to be considered by the Board of Directors, which was presented to them by me without recommendation.

[fol. 722] Mr. Logan: Do you realize and did you at the time you presented to the Board this amendment that this amendment could be of material aid and benefit to no one except Columbia Oil & Gasoline Corporation?

The Chairman: I didn't give any consideration to it.

Mr. Goodwin: That is not quite so, Mr. Logan, because it prevents the declaration, as it did, last December. It just could not declare a participating dividend, which it was then thinking about, and in which the common stock would have participated.

Mr. Logan: It can declare a dividend, although Columbia would not have participated.

Mr. Hand: Who would you say sponsored this resolution of the Board of Directors?

The Chairman: It was passed by the Board of Directors by a majority vote.

Mr. Hand: Who would you say sponsored it? Who spoke up for it?

The Chairman: I don't recall that. The records should show who made the motion and who voted for it.

Mr. Maguire: The records should show, but they don't.

Mr. Logan: Do the records show, Mr. Watkins?

[fol. 723] The Secretary: No. We customarily do not show who made the motions or who seconded them. I will take full responsibility as Secretary of the Corporation for preparing the Certificate of Incorporation amendment in definitive form. Nobody instructed the Secretary to prepare it in such form, and the only purpose in preparing it in such form was that it was my idea that the amendment should go to the Board in final form and if passed it would be presented in final form to the stockholders.

Mr. Maguire: Have you the record here as to who the proposer was and who the seconder was?

The Secretary: All I have is the minutes that were there.

Mr. Maguire: You haven't your papers?

The Secretary: After the minutes are approved, they are destroyed.

Mr. Maguire: It was proposed by Mr. Dunn and seconded by Mr. Winmill.

Mr. Logan: Mr. Dunn, did you propose this amendment?

Mr. Dunn: I had nothing to do with the preparation of it, but because I move most of the motions at the Directors' meetings, I think, although I am not sure, I was the [fol. 724] one who moved this in the ordinary order of business.

Mr. Logan: And did you discuss it with Columbia before you moved it?

Mr. Dunn: No.

Mr. Logan: Did you have direction from Columbia with respect to it at the time you voted?

Do you refuse to answer that question?

Mr. Dunn: Pardon me, I am thinking.

Mr. Logan: Pardon me. The time was rather long, the period of time which elapsed seemed long. That is my second question.

(The Reporter read Mr. Logan's question as follows:)

"Mr. Logan: Did you have directions from Columbia with respect to it at the time you voted?"

Mr. Dunn: No, I did not.

Mr. Hand: Let me clear up something: Mr. Watkins, you stated that the resolution as it now is here was prepared by you in final form before it was submitted to the Board?

The Secretary: Not the resolution.

Mr. Hand: I mean the amendment.

The Secretary: Yes.

Mr. Hand: I take it from what you said before in preparing that amendment you did so acting under instructions [fol. 725] from somebody?

The Secretary: The record shows that here. I stated that.

Mr. Hand: I just wanted to be sure.

The Chairman: Yes. So there will be no misunderstanding I instructed the Secretary to be in a position to put the thing up to the Board for consideration at the next meeting, and this is what resulted.

Mr. Logan: Mr. Creveling, I handed you a letter earlier in the day concerning this matter. Will you make it a part of the minutes?

The Chairman: Yes.

Mr. Logan: To show that Missouri-Kansas Pipe Line Company objected to the amendment.

The Chairman: Yes.

Mr. Logan: I will give Mr. Dunn a copy.

(The letter presented by Mr. Logan was made a part of the minutes and is as follows:)

March 11, 1940.

Panhandle Eastern Pipe Line Co.
Dover, Delaware.

GENTLEMEN:

As you know the Board of Directors of Panhandle East- [fol. 726] ern Pipe Line Company have proposed that the certificate of incorporation of Panhandle Eastern Pipe Line Company be amended by a vote of stockholders at the annual meeting to be held today. This proposed amendment would change the terms and provisions of the outstanding Class "A" $6 participating preferred stock. As counsel for Missouri-Kansas Pipe Line Company, may I point out to you that the representatives of Missouri-Kansas Pipe Line Company on the Board of Directors of Panhandle Eastern Pipe Line Company voted against the proposed amendment and that at the annual meeting Missouri-Kansas Pipe Line Company will vote its shares of the common stock of Panhandle Eastern Pipe Line Company against the proposed amendment.

May I point out that the terms and provisions of this Class "A" $6 participating preferred stock were fixed by contract viz., the contract of June 1, 1936, between yourself, Columbia Gas and Electric Corporation, Columbia Oil & Gasoline Corporation and the receivers of Missouri-Kansas Pipe Line Company acting on its behalf. If a vote is received in favor of the amendment, and thus the terms and provisions of said Class "A" $6 participating preferred stock are changed from those set forth in the contract of June 1, 1936, Missouri-Kansas Pipe Line Company will consider that you have repudiated and breached said [fol. 727] contract of June 1, 1936. We demand that no such vote be received.

Yours truly,

(Signed) Arthur G. Logan."

The Chairman: We will proceed now with the ballots to those desiring to vote on this proposed amendment.

I think we can make a little headway on this amendment if I will ask how the proxies held by Mr. Watkins and Mr. Sperry will be voted on the amendment.

Mr. Sperry: They are going to be voted for the adoption of the amendment.

Mr. Watkins: That is because of the peculiar wording of the notice and because the proxies feel that they must vote for it.

The Chairman: Are you going to vote on it, Mr. Dunn?

Mr. Dunn: No, I am not going to vote on it.

The Chairman: Mr. Maguire and the others here, how are you going to vote your proxies?

Mr. Dixon: I vote no.

Mr. Maguire: No.

[fol. 728] The Chairman: May the Chair then rule that the amendment has been lost and let the judges of election tally these in exact form.

Mr. Logan: I don't think you need that; just vote it down.

The Chairman: All right, it is voted down.

Mr. Dunn: I don't think it is voted down; it failed to pass.

The Chairman: It failed to pass.

Mr. Logan: Why isn't it voted down?

Mr. Dunn: I didn't vote on it.

The Chairman: The amendment as proposed is lost.

Mr. Maguire: Let us put in how it was done.

The Chairman: That will be in the record.

Mr. Logan: Mr. Dunn, I notice that for the first time this evening or rather the first time at this meeting you failed to vote. Were you instructed by Columbia Oil & Gasoline Corporation not to vote on this proposal?

Mr. Dunn: The same answer as to all your previous questions.

Mr. Logan: Then again we assume that your instructions from Columbia carried this time to the point of not [fol. 729] voting?

Mr. Dunn: The same answer.

Mr. Logan: You are aware, are you not, that we wrote to Columbia and demanded that they should not vote in favor of this amendment?

Mr. Dunn: You sent me a copy of the letter.

Mr. Logan: I sent you a copy of the letter which I wrote to Columbia, did I not?

Mr. Dunn: Yes.

Mr. Logan: I hand you what purports to be a copy of it, and will you state if that is a copy of the letter I sent you?

Mr. Dunn: I cannot state that. This is all marked up.

Mr. Logan: I mean without the markings.

Mr. Dunn: I don't even know that.

Mr. Logan: You received a copy of the letter I wrote Columbia Gas & Oil Corporation on March 8?

Mr. Dunn: Yes.

Mr. Logan: If I state this is a copy of it, will you accept that statemen-?

Mr. Dunn: I believe you.

[fol. 730] Mr. Logan: I would like to put this in as part of the record with this understanding: That all pencil marks come off.

The Chairman: Filed.

March 8, 1940.

Columbia Oil and Gasoline Corporation
Delaware Trust Building
Wilmington, Delaware

GENTLEMEN:

As you know the Board of Directors of Panhandle Eastern Pipe Line Company have proposed that the certificate of incorporation of Panhandle Eastern Pipe Line Company be amended by a vote of stockholders at the forthcoming annual meeting. This proposed amendment would change the terms and provisions of the outstanding Class "A" $6 participating preferred stock. As counsel for Missouri-Kansas Pipe Line Company, may I point out to you that the representatives of Missouri-Kansas Pipe Line Company on the Board of Directors of Panhandle Eastern Pipe Line Company voted against the proposed amendment and that at the annual meeting Missouri-Kansas Pipe Line Company will vote its shares of the common stock of Panhandle Eastern Pipe Line Company against the proposed amendment. [fol. 731] This means that the amendment can only be passed, through the vote of the preferred and common stock standing in the name of Mr. Gano Dunn, but beneficially owned by you. By the provisions of Paragraph 111 (b) of the consent decree entered on January 29, 1936, Mr. Dunn can only vote said stock on this proposed amendment as directed by you.

May I inquire on behalf of Missouri-Kansas Pipe Line Company whether or not you have directed, or intend to direct, Mr. Gano Dunn to vote said stock in favor of the

amendment. If so, may I point out that the terms and provisions of this Class "A" $6 participating preferred stock were fixed by contract viz., the contract of June 1, 1936, between yourself, Columbia Gas and Electric Corporation and the receivers of Missouri-Kansas Pipe Line Company acting on its behalf. If the stock held by Mr. Gano Dunn is voted in favor of the amendment, and thus the terms and provisions of said Class "A" $6 participating preferred stock are changed from those set forth in the contract of June 1, 1936, Missouri-Kansas Pipe Line Company will consider that you have repudiated and breached said contract of June 1, 1936.

Yours truly,

AGL:KR

[fol. 732] Mr. Logan: After I wrote that letter and sent you a copy did you discuss it with Columbia Oil, Mr. Dunn?

Mr. Dunn: I don't recognize your right to cross-examine me on those conferences with Columbia Oil.

Mr. Logan: Then you did have a conference on this letter?

Mr. Dunn: I don't recognize your right to ask me that question.

The Chairman: I think you will not get anything, Mr. Logan, by pursuing that.

Mr. Logan: I found that Mr. Creveling. I won't get anything at this meeting.

The Chairman: Anything else to come before the meeting?

Mr. Dunn: I move we adjourn.

Mr. Sperry: I second the motion.

The Chairman: All in favor say "aye".

Mr. Dunn: Aye.

Mr. Sperry: Aye.

The Chairman: Contrary?

Mr. Logan: No.

Mr. Maguire: No.

[fol. 733] Mr. Dixon: No.

Mr. Hand: No.

Mr. Mellor: No.

Mr. Tringham: No.

The Chairman: The motion is carried. The meeting is adjourned.

Mr. Logan: Will the Reporter please record that Mr. Gano Dunn made a motion to adjourn, which was seconded by Mr. Sperry, and which when put to a vote was voted for only by Mr. Dunn and Mr. Sperry, while the following voted against it: Mr. Logan, Mr. Maguire, Mr. Dixon, Mr. Hand, Mr. Mellor, and Mr. Tringham.

Thereupon, Mr. Creveling and Mr. Dunn and Mr. Sperry left the room, and Mr. Dixon took the Chair.

I move that Mr. Dixon be named Chairman at this time if the previous selection of him as Chairman of the whole meeting should be found not to have been a valid selection.

Mr. Maguire I second that.

Mr. Dixon: All those in favor signify by saying aye.

Mr. Logan: Aye.

Mr. Maguire: Aye.

[fol. 734] Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Opposed? The motion is carried.

Mr. Logan: Mr. Dixon, I move that the by-laws of the corporation be amended as follows:

First, that Article 11 be stricken out and there be substituted in lieu thereof the following:

"The property and business of this corporation shall be managed by its Board of Directors, consisting of fourteen directors. Directors need not be stockholders. They shall be elected at the Annual Meeting of Stockholders and each Director shall be directed to serve for one year or until his successor shall be elected and shall qualify. If the number of directors shall be increased by vote of the Board, the Board may elect new directors to complete the membership in the Board and such directors so elected shall hold office until the next Annual meeting of the Stockholders. The Directors may fill vacancies created by resignations, death, or refusal to serve of any member elected by the stockholders."

Second, that Article 22 be stricken out and there be substituted in lieu thereof the following:

[fol. 735] "The officers of the corporation shall be chosen by the stockholders and shall be a President, one or more Vice-Presidents, a Secretary and a Treasurer, and shall hold their respective offices for the term of one year and until their successors are duly elected and have qualified.

Any two offices may be held, and the duties performed, by one and the same person, except that the offices of President and Secretary must at all times be held and filled by two different persons."

Third, that Article 24 be stricken and there be substituted in lieu thereof the following:

"The salaries of all officers of the Corporation shall be fixed by the stockholders. The officers of the Corporation shall hold office until their successors are chosen and qualified in their stead. No officer or agent elected by the stockholders may be removed except for cause."

And fourth, that Article 42 be stricken out.

Mr. Hand: I second the motion.

Mr. Dixon: You have all heard the motion. Those in favor signify by saying "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

[fol. 736] Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary, no.

The motion is carried.

Mr. Logan: I now call the attention of the meeting to the fact that during the earlier stage of this meeting while Mr. Creveling was still in the Chair seven directors were declared to be elected by the common stock and two were declared to be elected by the Class B Preferred stock.

Due to the fact that the By-Laws have now been amended to call for fourteen directors, there are five places on the Board to be filled.

I move that the meeting proceed to the nomination and election of five additional directors, and that ballots be distributed for that purpose and that the use of tellers and judges of election be dispensed with.

Mr. Hand: I second the motion.

Mr. Dixon: All those in favor signify by saying "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

[fol. 737] Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Opposed?

The motion is carried.

Mr. Logan: I now nominate for the office of director the following five persons to act in the five positions created by the amendment to the By-laws just adopted:

Joseph Bodell, Hubert E. Howard, David Boyd-Smith, Geoffrey Mellor, and William C. Tringham.

Mr. Hand: I second the nomination.

Mr. Dixon: Are there any further nominations?

A reasonable time has elapsed since we have opened the meeting for nominations, and only five persons have been nominated.

I will entertain a motion to close the nominations.

Mr. Maguire: I make that motion.

Mr. Tringham: I second it.

Mr. Dixon: All those in favor say "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

[fol. 738] Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary, no.

The motion is carried.

I hereby distribute the ballots to be used for the election of the five directors to fill the five additional places created by the amendment to the By-laws just made.

Mr. Logan: Mr. Chairman, I hand you a ballot signed by all stockholders and proxies present for the five persons nominated to fill the five offices created by the amendment to the By-Laws just adopted.

Mr. Dixon: I have received the ballot with the names of the five men nominated, which has been signed by all stockholders present in person or by proxy, and I declare the following elected as directors of Panhandle Eastern to serve until the next Annual Meeting of Stockholders or until their successors are duly elected and qualified:

William C. Tringham, Joseph J. Bodell, David Boyd-Smith, Geoffrey Mellor, and Hubert E. Howard.

Mr. Logan: Mr. Chairman, in view of the amendment to the By-laws of Article 22, I nominate the following to be [fol. 739] the officers of the corporation:

President, W. G. Maguire; Vice-President, Gerard J. Neuner; Leith V. Watkins, Secretary; and W. C. Tringham, Treasurer.

Mr. Dixon: Is there any second?

Mr. Hand: I second it.

Mr. Dixon: You have heard the nominations for the officers of the Company. Are there any further nominations?

Mr. Hand: I move the nominations be closed.

Mr. Maguire: I second it.

Mr. Dixon: All in favor of closing the nominations say "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary, no.

The motion is carried.

All those in favor of the officers nominated please signify by saying "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

[fol. 740] Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary, no.

I hereby declare the persons named above elected for the respective positions for which they were nominated to serve until the next Annual Meeting of Stockholders and until their successors are duly elected and qualified.

Mr. Logan: I move that the salaries of the officers just elected be the same as that enjoyed by the same officers during the past year.

Mr. Hand: I second the motion.

Mr. Dixon: All those in favor signify by saying aye.

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary, no.

[fol. 741] The motion is carried.

Mr. Hand: Mr. Chairman, I offer the following resolutions:

Whereas by letter dated January 15, 1940 to this corporation, its directors and officers, Missouri-Kansas Pipe Line Company, a substantial stockholder of this corporation, proposed and demanded that certain action be taken by this corporation; and

Whereas this corporation, its officers and directors have failed and neglected to comply therewith in any respect; and

Whereas it is the sense of this meeting that the actions set forth in said letter, a copy of which was ordered to be made a part of the minutes of the Board of Directors of this corporation of January 17, 1940, constitute causes of action, which are assets of this corporation and should be pursued;

Now, Therefore, be it resolved that this corporation take the actions set forth and described in paragraphs 1 to 6 inclusive of said letter of January 15, 1940; and

Be It Further Resolved that this corporation employ and hereby do employ Robert J. Bulkley, of Cleveland, Ohio, [fol. 742] Russell Hardy, of Washington, D. C., and Arthur Logan, of Wilmington, Delaware, as its attorneys to undertake said proceedings by filing such suits in such Courts and taking such appeals with respect thereto as they in their judgment deem necessary and advisable; and

Be It Further Resolved that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services.

Mr. Mellor: I second the motion.

Mr. Dixon: All those in favor of the resolution offered signify by saying "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary?

I declare the Resolution unanimously carried.

Mr. Hand: Mr. Chairman, I offer the following resolution:

Whereas an action was filed this day in the United States [fol. 743] District Court for the District of Delaware by Missouri-Kansas Pipe Line Company and Lucille Dammann, against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, Michigan Gas Transmission Corporation, Gano Dunn and this corporation, asserting in

part derivative claims of this corporation against the said other defendants; and

Whereas said complaint asserts in part some of the causes of action which Missouri-Kansas Pipe Line Company demanded this corporation take in and by its letter of January 15, 1940, which is part of the minutes of this corporation of January 17, 1940;

Now, Therefore, Be It Resolved, that this corporation appear in said proceeding by counsel and ask leave to be made a party plaintiff to assert its rights and prosecute the same; and

Be It Further Resolved that this corporation prosecute its rights in such action with all due diligence; and

Be It Further Resolved that this corporation employ and hereby do employ Robert J. Bulkley, of Cleveland, Ohio, Russell Hardy, of Washington, D. C., and Arthur Logan, of Wilmington, Delaware, as its attorneys to take action provided for herein; and

[fol. 744] Be It Further Resolved that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services.

Mr. Mellor: I second the motion.

Mr. Dixon: All those in favor signify by saying "Aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.

Mr. Dixon: Aye.

Mr. Hand: Aye.

Mr. Mellor: Aye.

Mr. Tringham: Aye.

Mr. Dixon: Contrary?

The motion is carried.

Mr. Hand: I offer the following resolution:

Be It Resolved that the Board of Directors of this corporation be and hereby are instructed to forthwith redeem the outstanding Class A $6.00 Participating Preferred Stock of this Company, and for that purpose to use such portion of the cash surplus of the corporation as they deem advisable, the balance to be raised by the Company through the sale of bonds, debentures, through bank loans or otherwise.

Mr. Mellor: I second it.

[fol. 745] Mr. Dixon: All those in favor signify by saying "aye".

Mr. Logan: Aye.

Mr. Maguire: Aye.
Mr. Dixon: Aye.
Mr. Hand: Aye.
Mr. Mellor: Aye.
Mr. Tringham: Aye.
Mr. Dixon: Contrary?
The motion is carried.
Mr. Hand: I move we adjourn.
Mr. Maguire: I second the motion.
Mr. Dixon: It has been moved and seconded that the meeting adjourn. All in favor say "aye".
Mr. Logan: Aye.
Mr. Maguire: Aye.
Mr. Hand: Aye.
Mr. Mellor: Aye.
Mr. Tringham: Aye.
Mr. Dixon: The meeting is adjourned.

[fol. 746] I, Leith V. Watkins, Secretary of Panhandle Eastern Pipe Line Company, do hereby certify that the attached is a true and complete copy of the By-laws of Panhandle Eastern Pipe Line Company with all amendments to date.

Witness my hand and the corporate seal of said Company, this 28th day of March, 1940.

(Sgd.) Leith V. Watkins, Secretary. (Corporate Seal.)

[fols. 747-748] Panhandle Eastern Pipe Line Company

By-Laws

[fol. 749] Offices

1. The principal office shall be in the City of Dover, County of Kent, State of Delaware, and the name of the resident agent in charge thereof is United States Corporation Company.

The corporation may also have an office in the City of Kansas City, State of Missouri, and also offices at such other places as the Board of Directors may from time to time appoint or the business of the corporation may require.

Seal

2. The corporation seal shall have inscribed thereon the name of the corporation, the year of its organization and the words, "Corporate Seal, Delaware."

Stockholders' Meetings.

3. All meetings of the stockholders shall be held at the office of the corporation in Kansas City, Missouri, or at such other place either within or without the State of Missouri as may be determined upon by the Board of Directors and specified in the notice of the meeting.

Section 3. By-laws. (Board of Directors Meeting of 12/22/37)

"3. All meetings of the stockholders other than the Annual Meeting, shall be held either at the principal office of the corporation in the City of Dover, State of Delaware, or at such other place either within or without the State of Delaware as the Board of Directors shall establish. The office at which any given meeting shall be held shall be distinctly specified in the notice of such meeting."

4. An annual meeting of stockholders shall be held on the second Monday of March in each year, if not a legal holiday, and if a legal holiday, then on the next secular day follow-[fol. 750] ing, at 10 A. M., when they shall elect, by ballot, a Board of Directors and transact such other business as may properly be brought before the meeting.

Section 4. By-Laws. (Board of Directors Meeting of 12/22/37)

"4. An annual meeting of the stockholders of the corporation, for the election of directors and for the transaction of such other business as may come before the meeting, shall be held at the principal office of the corporation in the City of Dover, State of Delaware, on the second Monday of March in each year, at two o'clock in the afternoon, unless such day shall fall on a legal holiday, in which event the annual meeting shall be held on the day following."

5. The holders of a majority of the stock issued and outstanding, and entitled to vote, present in person or represented by proxy, shall be requisite and shall constitute a quorum at all meetings of the stockholders for the trans-

action of business except as otherwise provided by law, by the Certificate of Incorporation or by these By-Laws. If, however, such majority shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote, present in person or by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite amount of voting stock shall be present. At such adjourned meeting at which the requisite amount of voting stock shall be represented any business may be transacted which might have been transacted at the meeting as originally notified.

6. At such meeting of stockholders, every stockholder having the right to vote shall be entitled to vote in person, or by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three years prior to said meeting, unless said instrument provides for a longer period. Except where the transfer books of the Corporation shall have been closed or a date shall have been fixed as a record date for the determination of its stockholders entitled to vote, as provided in Section 35 of these By-Laws, no share of stock shall be voted on at any election for Directors which shall have been transferred on the books of the Corporation within twenty days next preceding such election of Directors. Persons holding stock as executors, administrators, guardians or trustees or who have pledged their stock shall be entitled to vote upon such stock, except that if in the transfer by the pledgor on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, only the pledgee, or his proxy, may represent said stock and vote thereon. The [fol. 751] vote for Directors, and, upon the demand of any stockholder having the right to vote, the vote upon any question before the meeting shall be by ballot. At all elections of Directors by stockholders of the corporation, each stockholder of each class entitled to vote at such election shall be entitled to as many votes as shall equal the number of his shares of stock of such class, multiplied by the number of Directors to be elected by the holders of stock of such class, and he may cast all of such votes for a single Director or may distribute them among the number to be voted for, or any two or more of them, as he may see fit. In all matters other than the election of Directors, and subject to the provisions of Subdivision V of Section B of Article Fourth of the Certificate of Incorporation of this Company, as

amended June 5, 1936, each stockholder shall be entitled to one vote for each share of stock, of whatever class, held by him. All questions other than the election of Directors shall be decided by a plurality vote.

7. A complete list of the stockholders entitled to vote at the ensuing election, arranged in alphabetical order, and the number of voting shares held by each, shall be prepared by the Secretary and filed in the office where the election is to be held, at least ten days before every election, and shall at all times, during the usual hour of business, and during the whole time of said election be open to the examination of any stockholder.

8. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, and shall be called by the President or Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of stockholders owning twenty-five per cent of the entire capital stock of the corporation issued and outstanding, and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

[fol. 752] 9. Business transacted at all special meetings shall be confined to the objects stated in the call.

10. Notice of any annual meeting of the stockholders shall be given in writing by the Secretary to each stockholder entitled to receive the same, by depositing the same, at least ten days before said meeting, in the United States mail in a postage prepaid envelope, addressed to each such stockholder at the last post office address appearing on the books of the corporation. Notice of any special meeting of the stockholders shall be given in like manner at least five days before the meeting. Notice of any meeting of stockholders shall state the time and place at which the same shall be held, and, in the case of a special meeting, the object or objects thereof, and the business transacted at any special meeting shall be confined to the objects stated in such notice. But any annual or special meeting may be held without notice provided all of the stockholders are present or duly represented by proxy at such meeting, or shall have waived notice in writing and consented to the holding thereof, and when all the stockholders are present or duly represented at such meeting, or shall have waived notice in writing and

consented to the holding thereof, any and all business may be transacted which may properly be brought before said meeting. The presence of any stockholder in person or by proxy at any meeting of the stockholders, however called or notified, or his written approval of the minutes of such meeting endorsed thereon, shall in itself constitute a waiver of notice of said meeting.

Directors

11. The property and business of this corporation shall be managed by its Board of Directors, consisting of such number of directors, not less than three, as may be determined upon from time to time by the board. Directors need not be stockholders. They shall be elected at the annual meeting of stockholders and each director shall be elected [fol. 753] to serve for one year or until his successor shall be elected and shall qualify. If the number of directors shall be increased by vote of the board, the board may elect new directors to complete the membership in the board and such directors so elected shall hold office until the next annual meeting of the stockholders.

12. The directors may have one or more offices and keep the books of the corporation, except the original or duplicate stock ledger, outside of the State of Delaware, at the office of the corporation in the City of Kansas City, Missouri, or at such other places as they may from time to time determine. All meetings of the directors shall be held in Kansas City, Missouri, or at such other place or places, whether within or without the State of Missouri, as they may from time to time determine.

13. The Board of Directors may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation, or by these By-Laws directed or required to be exercised or done by the stockholders.

Meetings of the Board

14. The newly elected board may meet at such place and time as shall be fixed by the vote of the stockholders at the annual meeting, for the purpose of organization or otherwise, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute

the meeting, provided, a majority of the whole board shall be present; or they may meet at such place and time as shall be fixed by the consent in writing of all the directors.

15. Regular meetings of the board may be held without notice at such time and place as shall from time to time be determined by the board.

[fol. 754] 16. Notice of any special meeting of the board shall be given to each director, either personally or by mail or by telegram, at least three days before said meeting. Notice of a special meeting shall state the time and place of such special meeting and the subject or subjects which will come before it. Meetings of the Board of Directors may be held at any time and place, without notice, provided all of the directors are present at such meeting, or shall have waived notice in writing and consented to the holding thereof, and when all of the directors are present at such meeting or have waived notice in writing and consented to the holding thereof, any and all business may be transacted which the Board of Directors may desire to transact. The presence of any Director at any meeting of the Board of Directors, however called or notified, or his written approval of the minutes of such meeting endorsed thereon, shall of itself constitute a waiver of notice of such meeting.

17. At all meetings of the Board of Directors, a majority of the board shall be requisite and sufficient to constitute a quorum for the transaction of business, and in case there be no quorum present, the directors present at such meeting, although less than a quorum, may adjourn the meeting from day to day or sine die. The act of a majority of the directors present at any meeting at which there is a quorum, shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation.

Executive Committee

18. There may be an executive committee of two or more directors designated by resolution passed by a majority of the whole board. Said committee may meet at stated times, or on notice to all by any of their own number. During the intervals between meetings of the Board such committee shall advise with and aid the officers of the corporation in all matters concerning its interests and the management of

its business, and generally perform such duties and exer-
[fol. 755] cise such powers as may be directed or delegated by the Board of Directors from time to time. The Board may delegate to such committee authority to exercise all the powers of the board, except power to amend the By-Laws, while the Board is not in session. Vacancies in the membership of the committee shall be filled by the Board of Directors at a regular meeting or at a special meeting called for that purpose.

19. The executive committee shall keep regular minutes of its proceedings and report the same to the board when required.

Compensation of Directors

20. Directors, as such, shall not receive any stated salary for their services, but by resolution of the board, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board; provided, that nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

21. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Officers.

22. The officers of the corporation shall be chosen by the directors and shall be a President, one or more Vice-Presidents, a Secretary and a Treasurer, who shall be elected at the first meeting of the Board of Directors after the annual meeting of the stockholders, and shall hold their respective offices for the term of one year and until their successors are duly elected and have qualified. Any two offices may be held, and the duties performed, by one and the same person, except that the offices of President and Secretary must at all times be held and filled by two different persons. The President shall be chosen by the Directors from their own number.

[fol. 756] 23. The board may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board.

24. The salaries of all officers of the corporation shall be fixed by the Board of Directors. The officers of the corporation shall hold office until their successors are chosen and qualified in their stead. Any officer or agent elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole board.

The President

25. (a) The President shall be the chief executive officer of the corporation; he shall preside at all meetings of the stockholders and directors; he shall have general and active management of the business of the corporation, and shall see that all orders and resolutions of the board are carried into effect.

(b) He shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation; shall keep in safe custody the seal of the corporation, and when authorized by the board, affix the same to any instrument requiring it, and when so affixed it shall be attested by the signature of the Secretary or the Treasurer.

(c) He shall be ex officio a member of all standing committees, and shall have the general powers and duties of supervision and management usually vested in the office of President of a corporation.

Vice-President

26. Each Vice-President shall be vested with all the powers and required to perform all the duties of the President in his absence or disability, and the performance of any act or the execution of any instrument by a Vice-Presi- [fol. 757] dent shall constitute conclusive evidence of the absence or disability of the President, and each Vice-President shall perform such other duties as may be prescribed by the Board of Directors.

The Secretary

27. The Secretary shall attend all sessions of the Board and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform like duties for the standing committees when required. He shall give, or cause to be

given, notice of all meetings of the stockholders and of the Board of Directors. The Secretary shall also be chief accounting officer of the corporation and may also, by resolution of the Board of Directors, be appointed Controller of the corporation. He shall have such powers and perform such other duties as may be prescribed from time to time by the Board of Directors or the President, under whose supervision he shall be.

The Assistant Secretary

28. If the board appoints an Assistant Secretary, such assistant secretary shall be vested with all the powers and required to perform all the duties of the Secretary in his absence or disability and the performance of any act or the execution of any instrument by the Assistant Secretary shall constitute conclusive evidence of the absence or disability of the Secretary, and the Assistant Secretary shall perform such other duties as may be prescribed by the Board of Directors.

The Treasurer

29. (a) The Treasurer shall be the chief financial officer of the corporation and shall have the custody of the cor-[fol. 758] porate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys, and other valuable effects in the name and to the credit of the corporation, in such depositaries as may be designated by the Board of Directors.

(b) He shall disburse the funds of the corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meeting of the board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the corporation.

(c) He shall give the corporation a bond if required by the Board of Directors in a sum, and with one or more sureties satisfactory to the Board, for the faithful performance of the duties of his office, and for the restoration to the corporation, in case of his death, resignation, retirement and removal from office, of all books, papers, vouchers,

money and other property of whatever kind in his possession or under his control belonging to the corporation.

The Assistant Treasurer

30. If the Board appoints an Assistant Treasurer, such Assistant Treasurer shall be vested with all the powers and required to perform all the duties of the Treasurer in his absence or disability, and the performance of any act or the execution of any instrument by the Assistant Treasurer shall constitute conclusive evidence of the absence or disability of the Treasurer, and the Assistant Treasurer shall perform such other duties as may be prescribed by the Board of Directors.

[fol. 759] Vacancies

31. If the office of any director, or any officer or agent, one or more, becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the directors then in office, although less than a quorum, by a majority vote, may choose a successor or successors, who shall hold office for the unexpired term in respect of which such vacancy occurred.

Duties of Officers May Be Delegated

32. In case of the absence of any officer of the corporation, or for any other reason that the board may deem sufficient, the board may delegate, for the time being, the powers or duties, or any of them, of such officer to any other officer, or to any director, provided a majority of the entire board concur therein.

Certificates of Stock

33. The certificates of stock of the corporation shall be numbered and shall be entered in the books of the corporation as they are issued. They shall exhibit the holder's name and number of shares and shall be signed by the President or a Vice-President and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary.

Transfers of Stock

34. Transfers of stock shall be made on the books of the corporation only by the person named in the certificate or

by attorney, lawfully constituted in writing, and upon surrender of the certificate therefor.

[fol. 760] Closing of Transfer Books

35. The Board of Directors shall have the power to close the stock transfer books of the corporation for a period not exceeding fifty days preceding the date of any meeting of the stockholders or the date for payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect; provided, however, that in lieu of closing the stock transfer books as aforesaid, the Board of Directors shall have power to fix in advance a date not exceeding fifty (50) days preceding the date of any meeting of the stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, and in such case only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting, or to receive a payment of such dividend, or to receive such allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of stock on the books of the corporation after any such record date fixed as aforesaid.

Registered Stockholders

36. The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of Delaware.

[fol. 761] Lost Certificates

37. Any person claiming a certificate of stock to be lost or destroyed shall make an affidavit or affirmation of that

fact and advertise the same in such manner as the Board of Directors may require, and shall if the directors so require give the corporation a bond of indemnity, in form and with one or more sureties satisfactory to the Board, in at least double the value of the stock represented by said certificate, whereupon the new certificate may be issued of the same tenor and for the same number of shares as the one alleged to be lost or destroyed.

Inspection of Books

38. The Directors shall determine from time to time, whether, and, if allowed, when and under what conditions and regulations the accounts and books of the corporation (except such as are by statute specifically required to be open to inspection) or any of them shall be open to the inspection of the stockholders, and the stockholders' rights in this respect are and shall be restricted and limited accordingly.

Checks

39. All checks or demands for money and notes of the corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

Dividends

40. Dividends upon the capital stock of the corporation may be declared by the Board of Directors at any regular or special meeting out of the net assets of the Company in excess of its capital, or in case there shall be no such excess out of its net profits for the fiscal year, then current [fol. 762] and/or the preceding fiscal year, as provided in the laws of the State of Delaware relative to corporations and the charter of the Company.

Before payment of any dividend or making any distribution of profit, there may be set aside out of the surplus or net profits of the corporation such sum or sums as the Directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purposes as the directors shall think conducive to the interests of the corporation.

Notices

41. Whenever, under the provisions of these By-Laws, notice is required to be given to any director, officer, or stockholder, it shall be construed to mean personal notice, but such notice may be given in writing, by mail, by depositing the same in the post-office or letter-box in a postpaid sealed wrapper, addressed to such stockholder, officer or director at such address as appears on the books of the corporation, or, in default of other address, to such director, officer or stockholder at the General Post Office in the City of Kansas City, Missouri, and such notice shall be deemed to be given at the time when the same shall be thus mailed.

Amendments

42. These By-Laws may be altered or amended by the affirmative vote of a majority of the stock issued and outstanding and entitled to vote at any regular or special meeting of the stockholders, if notice of the proposed alteration or amendment be contained in the notice of the meeting, or by the affirmative vote of a majority of the Board of Directors; provided, however, that no change of the time or place for the election of directors shall be made within sixty days next before the day on which such election is to be held.

[fol. 763] I, Leith V. Watkins, Secretary of Panhandle Eastern Pipe Line Company, do hereby certify that the attached is a true and complete copy of the Notice of Annual Meeting of the Stockholders of Panhandle Eastern Pipe Line Company held at the principal office of the Company, No. 19-21 Dover Green, in the City of Dover, State of Delaware, on Monday, March 11, 1940, at 2:00 o'clock P. M., as mailed to all holders of all classes of stock of said Company on February 28, 1940.

Witness my hand and the corporate seal of said Company, this 28th day of March, 1940.

(Sgd.) Leith V. Watkins, Secretary. (Corporate Seal.)

[fol. 764] Panhandle Eastern Pipe Line Company

Notice of Annual Meeting of Stockholders to Be Held March 11, 1940

Notice Is Hereby Given that the Annual Meeting of the Stockholders of Panhandle Eastern Pipe Line Company, a Delaware corporation, will be held at the principal office of the Company, No. 19-21, Dover Green, in the City of Dover, State of Delaware, on Monday, March 11, 1940, at 2:00 o'clock P. M., for the following purposes:

1. To elect a Board of Directors for the ensuing year;

2. To consider and act upon a proposed amendment to the Certificate of Incorporation of the Company whereby the seventh paragraph of Subdivision I of Section B of Article Fourth will be amended to read as follows:

"After the requirements in respect of the preferential dividends upon the Preferred Stock of both classes, as hereinbefore set forth, to the end of the then current quarterly dividend period for said stock shall have been met, and after the provisions of the immediately preceding paragraph shall have been complied with, and not otherwise, the holders of the Common Stock shall be entitled to receive, out of the remaining net profits or net assets of the corporation applicable to dividends, dividends at a rate not to exceed One Dollars and Fifty Cents ($1.50) per share per annum, before any participating dividends shall be declared or paid upon or set apart for the Class A Preferred Stock and the Common Stock as hereinafter provided. In the event of the issue of additional Common Stock during any year all such dividends paid on the Common Stock in such year prior to the issue of such additional Common Stock and all such dividends declared and payable to holders of record of Common Stock on a date in such year prior to such additional issue, shall be deemed to have been paid on the additional Common Stock so issued."

and

3. To transact such other business as may properly come before the meeting or any adjournment or adjournments thereof.

If any stockholder is unable to be present at the meeting and wishes his stock voted thereat he should sign and return

the enclosed form of proxy. No postage is required if the proxy card is mailed in the United States. If you prefer you may enclose it in your own envelope to which the usual postage stamp must be affixed before mailing.

By Order of the Board of Directors.

Leith V. Watkins, Secretary.

Dated, New York, N. Y. February 28, 1940.

[fol. 765] AFFIDAVIT OF GANO DUNN IN SUPPORT OF MOTION OF COLUMBIA GAS TO DISMISS APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY

STATE OF NEW YORK,
County of New York, ss:

Gano Dunn, being duly sworn, deposes and says:

I am the trustee appointed by and acting under a Decree, dated January 29, 1936, entered by the United States District Court for the District of Delaware in the cause entitled "United States of America, Petitioner, v. Columbia Gas & Electric Corporation, et al.; In Equity No. 1099."

I attended the annual meeting of stockholders of Panhandle Eastern Pipe Line Company held on March 11, 1940, at the office of the Company at No. 19-21 Dover Green, Dover, Delaware. At such meeting, I voted the stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation on various matters which came before the meeting. The record of my voting at this meeting is contained in the transcript of the proceedings which occurred at said meeting, which transcript, certified as true and correct by Harry J. Blam, official shorthand reporter for the Delaware law courts, is attached to the affidavit of Joe D. Creveling, dated March 28, 1940, filed in the above cause.

[fol. 766] The votes which I cast at said meeting were pursuant to the authority given to me by the above-mentioned Decree and by instructions which I received from Mr. D. M. Wilson, Vice-President of Columbia Oil & Gasoline Corporation acting in the vacancy of the office of President. The instructions which I received from Mr. Wilson representing Columbia Oil & Gasoline Corporation were that I should vote the shares of stock of Panhandle Eastern Pipe Line

Company beneficially owned by Columbia Oil & Gasoline Corporation, and standing in my name as Trustee, in favor of the amendment to the Articles of Incorporation proposed by the board of directors of Panhandle Eastern Pipe Line Company for adoption by the shareholders at the annual meeting of Panhandle Eastern Pipe Line Company; that as to all other matters except directors, which might come before said meeting, I should vote said shares as, in my discretion, seemed best for the interest of Panhandle Eastern Pipe Line Company and generally to support the management; that, in case any matters were presented at the meeting on which I had any doubt as to how to vote, I could adjourn the meeting for a sufficient time to confer by telephone with the representatives of Columbia Oil & Gasoline Corporation; and that as regards directors, Columbia Oil & Gasoline Corporation recommended in conference with me certain persons as directors of Panhandle Eastern Pipe Line Company and from among the persons so recommended I selected, in addition to myself, as the 6 of the 9 directors of Panhandle Eastern Pipe Line Company which the stock of Panhandle Eastern Pipe Line Company ben- [fol. 767] eficially owned by Columbia Oil & Gasoline Corporation was entitled to elect, the following persons: Joseph A. Bower, Joe D. Creveling, Walter G. Mortland, Richard C. Patterson, Jr. and Robert C. Winmill. Subsequent to obtaining the aforementioned instructions and prior to the meeting of stockholders, the instruction in respect of voting in favor of the above-mentioned amendment to the Articles of Incorporation was countermanded and I was instructed by Columbia Oil & Gasoline Corporation not to vote on this question.

(Sgd.) Gano Dunn.

Sworn to and subscribed before me this 28th day of March, 1940. (Sgd.) John Vogt. Notary Public, Queens County No. 1979, Reg. No. 5231. Certificate filed in New York Co. No. 25, Reg. 1-V-19. Commission expires March 30, 1941. (Notarial Seal.)

[fol. 768] AFFIDAVIT OF DON M. WILSON IN SUPPORT OF MOTION OF COLUMBIA GAS TO DISMISS APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY

STATE OF NEW YORK,
County of New York, ss:

Don M. Wilson, being duly sworn, deposes and says:

I am the Vice-President of Columbia Oil & Gasoline Corporation. Since June, 1939, the office of President of said corporation has been vacant and I have been acting in the capacity of chief executive officer of the corporation and as the presiding officer at all meetings of the board of directors.

On March 5, 1940, I directed Mr. Gano Dunn, who has been appointed by this Court in the consent decree entered in the above entitled cause on January 29, 1936, as trustee of the stock of Panhandle Eastern Pipe Line Company owned by Columbia Oil & Gasoline Corporation, that he should vote said shares of stock at the annual meeting of the stockholders of Panhandle Eastern Pipe Line Company to be held on March 11, 1940, in favor of the amendment to the Articles of Incorporation proposed by the board of directors of Panhandle Eastern Pipe Line Company for adoption by the shareholders at said annual meeting; that as to all other matters except election of directors, which might come before said meeting, he should vote said shares as, in his discretion, seemed best for the interest of Pan-
[fol. 769] handle Eastern Pipe Line Company and generally to support the management; that, in case any matters were presented at the meeting on which he had any doubt as to how to vote, he could adjourn the meeting for a sufficient time to confer by telephone with the representatives of Columbia Oil & Gasoline Corporation.

On March 8, 1940, at a special meeting of the board of directors of Columbia Oil & Gasoline Corporation, I submitted to said board for its approval the aforesaid directions which I had given to Mr. Dunn regarding the voting of the shares of stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation at the annual meeting of the stockholders of Panhandle Eastern Pipe Line Company to be held on March 11, 1940. At said special meeting, the board of directors of Columbia Oil & Gasoline Corporation duly adopted a

resolution approving said directions. A true and correct copy of an excerpt from the minutes of said meeting of the board of directors of Columbia Oil & Gasoline Corporation relating to said directions and of said resolution, is as follows:

"Panhandle Eastern Pipe Line Company

The Chairman reported that at a meeting with Mr. Gano Dunn, Trustee, his counsel, and with counsel for this corporation, he had directed Mr. Dunn to vote the shares of stock of Panhandle Eastern Pipe Line Company beneficially owned by this corporation, and standing in his name as Trustee, in favor of the amendment to the Articles of Incorporation proposed by the board of directors of Pan- [fol. 770] handle for adoption by the shareholders at the forthcoming annual meeting of Panhandle; that as to all other matters except directors, which might come before said meeting he had directed Mr. Dunn to vote said shares as, in his discretion, seemed best for the interest of Panhandle and generally to support the management; that, in case any matters were presented at the meeting on which Mr. Dunn had any doubt as to how to vote, he could adjourn the meeting for a sufficient time to confer by telephone with the representatives of this corporation; and that as regards directors, he suggested sending the following letter to Mr. Dunn:

March 8, 1940.

Mr. Gano Dunn, Trustee, 80 Broad Street, New York, N. Y.

DEAR MR. DUNN:

After consultation with you, as Trustee holding the voting stock in Panhandle Eastern Pipe Line Company, which is owned by this Corporation, and with your advice, we recommend the following individuals for your selection as Directors of Panhandle Eastern Pipe Line Company, and request that you elect them as such by vote of the stock which you hold as Trustee:

Joseph A. Bower	165 Broadway	New York City
Joe D. Creveling	90 Broad Street	New York City
Gano Dunn	80 Broad Street	New York City
Walter G. Mortland	37 East 64th St.	New York City

Richard C. Patterson, Jr.	1270 Sixth Avenue	New York City
Robert C. Winmill	1 Wall Street	New York City

Very truly yours, (Sgd.) D. M. Wilson, Vice President.

Thereupon, after discussion, on motion duly made and seconded, it was unanimously

Resolved that the aforesaid action and suggestion of the Chairman be and hereby are approved."

Before determining upon the six directors above named, Columbia Oil & Gasoline Corporation recommended in conference with Mr. Dunn certain persons as directors of Panhandle Eastern Pipe Line Company, and from among the persons so recommended Dr. Dunn s-lected the six above named, as the six of the nine directors of Panhandle Eastern Pipe Line Company which the stock of Panhandle East-
[fol. 771] ern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation was entitled to elect.

On March 9, 1940, I received a letter, dated March 8, 1940, addressed to Columbia Oil & Gasoline Corporation at its Wilmington office, from Arthur G. Logan, as attorney for Missouri-Kansas Pipe Line Company, a true copy of which is as follows:

"Arthur G. Logan
Attorney at Law
Delaware Trust Building
Wilmington, Delaware

March 8, 1940.

Columbia Oil and Gasoline Corporation, Delaware Trust Building, Wilmington, Delaware.

GENTLEMEN:

As you know the Board of Directors of Panhandle Eastern Pipe Line Company have proposed that the certificate of incorporation of Panhandle Eastern Pipe Line Company be amended by a vote of stockholders at the forthcoming annual meeting. This proposed amendment would change the terms and provisions of the outstanding Class "A" $6 participating preferred stock. As counsel for Missouri-

Kansas Pipe Line Company, may I point out to you that the representatives of Missouri-Kansas Pipe Line Company on the Board of Directors of Panhandle Eastern Pipe Line Company voted against the proposed amendment and that at the annual meeting Missouri-Kansas Pipe Line Company will vote its shares of the common stock of Panhandle Eastern Pipe Line Company against the proposed amendment. This means that the amendment can only be passed, through the vote of the preferred and common stock standing in the name of Mr. Gano Dunn, but Beneficially owned by you. By the provisions of Paragraph III (b) of the consent decree entered on January 29, 1936, Mr. Dunn can only vote said stock on this proposed amendment as directed by you.

May I inquire on behalf of Missouri-Kansas Pipe Line Company whether or not you have directed, or intend to direct, Mr. Gano Dunn to vote said stock in favor of the amendment. If so, may I point out that the terms and [fol. 772] provisions of this Class "A" $6. participating preferred stock were fixed by contract, viz., the contract of June 1, 1936 between yourself, Columbia Gas and Electric Corporation and the receivers of Missouri-Kansas Pipe Line Company acting on its behalf. If the stock held by Mr. Gano Dunn is voted in favor of the amendment, and thus the terms and provisions of said Class "A" $6 participating preferred stock are changed from those set forth in the contract of June 1, 1936, Missouri-Kansas Pipe Line Company will consider that you have repudiated and breached said contract of June 1, 1936.

Yours truly, (Signed) Arthur G. Logan."

AGL: KR.

Thereupon, after discussing said letter with several of the members of the board of directors of Columbia Oil & Gasoline Corporation and after obtaining their approval to a modification of the instructions to Mr. Gano Dunn to the extent hereinafter set forth, I modified the instructions aforesaid to Mr. Gano Dunn by Letter dated March 9, 1940, a true copy of which is as follows:

"March 9, 1940.

Mr. Gano Dunn, Trustee, 80 Broad Street, New York, N. Y.

DEAR MR. DUNN:

With reference to the amendment proposed by the Board of Directors of Panhandle Eastern Pipe Line Company to

be made to the certificate of incorporation of Panhandle Eastern Pipe Line Company at the annual meeting of the shareholders scheduled to be held Monday, March 11th, I wish to advise you that Columbia Oil & Gasoline Corporation desires that you as titular owner of the shares of stock of that corporation beneficially owned by Columbia Oil & Gasoline Corporation refrain from voting said shares on the proposal for the adoption of such amendment.

We are enclosing herewith a copy of a letter which Mr. William H. Button, general counsel of the corporation, has [fol. 773] sent to Mr. Arthur G. Logan, attorney for the Missouri-Kansas Pipe Line Company, in reply to Mr. Logan's letter of March 8th to the Columbia Oil & Gasoline Corporation, a copy of which we are informed was sent to you.

This letter supersedes any previous instructions which may have been given you in regard to voting the shares beneficially owned by Columbia Oil & Gasoline Corporation on the proposed amendment.

Very truly yours, Columbia Oil & Gasoline Corporation, by (Signed) Don M. Wilson, Vice President."

Pursuant to my directions and with the approval of several members of the board of directors of Columbia Oil & Gasoline Corporation, Mr. William H. Button, as counsel of said corporation and on its behalf, replied to the aforesaid letter received from Arthur G. Logan by letter dated March 9, 1940, a true copy of which is as follows:

"March 9, 1940.

Mr. Arthur G. Logan, Attorney for Missouri-Kansas Pipe Line Company, Delaware Trust Building, Wilmington, Delaware.

My Dear Mr. Logan:

Mr. Wilson, Vice-President of the Columbia Oil & Gasoline Corporation, has called my attention to your letter of March 8, 1940 addressed to the Columbia Oil & Gasoline Corporation in reference to the proposed amendment to the certificate of incorporation of the Panhandle Eastern Pipe Line Company that has been recommended by the Board of Directors of that company, and which amendment, I understand, will be presented for action to the meeting of the stockholders of that company to be held on the 11th instant,

and in which communication you protest against the adoption of such amendment on the ground that it would be a breach of the contract now existing between the Columbia Oil & Gasoline Corporation, the Columbia Gas & Electric Corporation, and the Receivers of the Missouri-Kansas Pipe Line Company to whose rights, I understand, your client has succeeded.

[fol. 774] Columbia Oil & Gasoline Corporation does not agree with the position taken by your client the Missouri-Kansas Pipe Line Company that the voting of the shares of common stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation in favor of the proposed amendment to the certificate of incorporation would violate the terms of that contract. It is its view that the proposed amendment serves to clarify as well as to carry out the true intention and interpretation of the present provisions of the certificate of incorporation. Nevertheless the matter is of such minor importance in view of the possible early retirement pursuant to the terms of the Plan incorporated in the joint motion of Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation now pending before Judge Nields in the Delaware District Court of the entire issue of $10,000,000 par value Class A 6% preferred stock that Columbia Oil & Gasoline Corporation has determined to take no part in supporting the amendment.

Very truly yours, (Signed) William H. Button, Counsel for Columbia Oil & Gasoline Corporation."

At a special meeting of the board of directors of Columbia Oil & Gasoline Corporation duly held on March 20, 1940, I reported to the board the action which had been taken on behalf of Columbia Oil & Gasoline Corporation in modifying its instructions to Mr. Gano Dunn as a result of the aforementioned letter received from Arthur G. Logan and also the action which Mr. Gano Dunn had taken at the annual meeting of the stockholders of Panhandle Eastern Pipe Line Company which was held on March 11, 1940, in voting the stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation pursuant to such instructions, as modified, as aforesaid, and thereupon resolutions were duly adopted by said [fol. 775] board approving, ratifying and confirming said actions. A true and correct copy of excerpts from the min-

utes of said meeting of the board of directors of Columbia Oil & Gasoline Corporation relating to said board's action on these matters and of said resolutions, is as follows:

"Panhandle Eastern Pipe Line Company

The Chairman reported that after receiving a letter dated March 8, 1940 from Mr. Arthur G. Logan, Delaware Trust Building, Wilmington, Delaware, attorney for Missouri-Kansas Pipe Line Company, he consulted with various Directors of Columbia Oil & Gasoline Corporation, and as a result the chairman notified Mr. Gano Dunn, Trustee, by Letter on March 9, 1940 that, at the Annual Stockholders' meeting of Panhandle Eastern Pipe Line Company on March 11, 1940 he was to refrain from voting on the proposed amendment to the Panhandle Eastern Certificate of Incorporation; further, the Chairman presented to the meeting copies of the two letters above mentioned, together with a copy of Mr. Button's letter of March 9, 1940 to Mr. Logan, all three of which are attached to and are part of these Minutes. Thereupon, after discussion, on motion duly made and seconded, it was unanimously

Resolved that the aforesaid actions of the Chairman and of Counsel be and hereby are approved.

* * * * * * *

The Chairman stated that he had received an official stenographic transcript of the proceedings of the Annual Meeting of the Stockholders of the Panhandle Eastern Pipe Line Company held at Dover, Delaware, on Monday, March 11, 1940, at which meeting Mr. Gano Dunn, Trustee appointed under the provisions of the Consent Decree entered in the District Court of the United States for the District of Delaware on January 29, 1936, in the case of United States of America, versus Columbia Gas & Electric Corporation, et al., No. 1099 in Equity, voted for the election of Directors of said Panhandle Company and voted on certain other propositions that came before said meeting. Copies of this stenographic Transcript of said meeting were furnished to all Directors present and considered by them.

[fol. 776] Upon consideration of said Minutes and of the manner in which said Gano Dunn, Trustee, had voted the stock in the said Panhandle Company, the beneficial ownership of which is in this corporation, it was

Resolved that all of the votes and all of the positions taken by said Gano Dunn as Trustee or otherwise at said Stockholders' Meeting be and the same hereby are in all respects approved, ratified and confirmed."

I have been informed, and verily believe, that Missouri-Kansas Pipe Line Company, by its attorneys, Arthur G. Logan and Logan & Duffy, on or about March 13, 1940, has instituted an action against Panhandle Eastern Pipe Line Company, Joe D. Creveling, Louis F. Sperry, Joseph J. Bodell, David Boyd-Smith, Hubert E. Howard, Geoffrey Mellor and William C. Tringham, in the Court of Chancery of the State of Delaware, in and for New Castle County, which is now pending in said Court, and a copy of the complaint filed by Missouri-Kansas Pipe Line Company in said action is annexed hereto as Exhibit "A" and made a part hereof.

(Sgd.) Don M. Wilson.

Sworn to and subscribed before me this 28th day of March, 1940. (Sgd.) John F. Clancy, Notary Public; New York Co. Clerk's No. 95; New York Co. Register No. 1C183. Term expires March 30, 1941. (Notarial Seal.)

[fol. 777] EXHIBIT "A" TO AFFIDAVIT

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE, IN AND FOR NEW CASTLE COUNTY

MISSOURI-KANSAS PIPE LINE COMPANY, Complainant,

vs.

PANHANDLE EASTERN PIPE LINE COMPANY, JOE D. CREVELING, Louis F. Sperry, Joseph J. Bodell, David Boyd-Smith, Hubert E. Howard, Geoffrey Mellor and William C. Tringham, Respondents

BILL OF COMPLAINT UNDER SECTION 31 OF THE DELAWARE CORPORATION LAW

To the Chancellor of the State of Delaware:

Humbly complaining, your Orator, Missouri-Kansas Pipe Lie Company, showeth unto your Honor as follows:

1. Your Orator, Missouri-Kansas Pipe Line Company, is a corporation duly organized and existing under and by vir-

tue of the laws of the State of Delaware and is the owner and holder of record of 339,275 shares of the common stock of Panhandle Eastern Pipe Line Company out of a total issued and outstanding of 807,367 shares.

2. The respondent Panhandle Eastern Pipe Line Company is a corporation duly organized and existing under the laws of the State of Delaware.

3. The individual defendants above named, except William C. Tringham, are all non-residents of the State of Delaware and their home or office addresses are as follows:

Joe D. Creveling—c/o Panhandle Eastern Pipe Line Company, 90 Broad street, New York City.

Louis F. Sperry—c/o Panhandle Eastern Pipe Line Company, 90 Broad Street, New York City.

[fol. 778] Joseph J. Bodell—Providence, Rhode Island.

David Boyd-Smith—327 So. LaSalle Street, Chicago, Illinois.

Hubert E. Howard—230 No. Michigan Avenue, Chicago, Illinois.

Geoffrey Mellor—Room 1560, 120 Broadway, New York City.

William C. Tringham—Room 248, Delaware Trust Building, Wilmington, Delaware.

4. That on the 11th day of March, A. D. 1940, at 2 o'clock p. m., the annual meeting of stockholders of Panhandle Eastern Pipe Line Company for the election of directors was duly called and held at the offices of the corporation within the State of Delaware at 19 Dover Green, Dover, Delaware. More than a quorum were in attendance and the meeting proceeded to the election of directors, at which time the By-Laws were amended to provide for 14 directors and the following were elected to serve until the next annual meeting of stockholders and until their successors are duly elected and qualified: William G. Maguire, A. Faison Dixon, Robert J. Bulkley, Gano Dunn, Joe D. Creveling, Joseph A. Bower, Walter G. Mortland, Robert C. Winmill, Richard C. Paterson, Joseph J. Bodell, David Boyd-Smith, Hubert E. Howard, Geoffrey Mellor, William C. Tringham.

5. At said meeting the By-Laws of the corporation were changed to provide for the election of officers by stock-

holders, whereupon the following were duly elected as the [fol. 779] officers of the corporation:

William G. Maguire, President.
Gerard J. Neuner, Vice President.
Leith V. Watkins, Secretary.
William C. Tringham, Treasurer.

6. That prior to the holding of said annual meeting and until the election aforesaid, the following were directors of the corporation: John E. Bierwirth, Joseph A. Bower, Joe D. Creveling, A. Faison Dixon, Gano Dunn, William G. Maguire, Walter G. Mortland, Kenneth E. Walser, Robert C. Winmill.

7. That prior to said meeting and until the election aforesaid, the following were the officers of the corporation:

J. C. Creveling, President.
Gerard J. Neuner, Vice President in Charge of Operations.
Robert D. Field, Vice President.
Leith V. Watkins, Secretary and Controller.
Louis F. Sperry, Treasurer.

8. That at said annual meeting Joe D. Creveling presided and declared that only the following were elected as directors: William G. Maguire, A. Faison Dixon, Robert J. Bulkley, Gano Dunn, Joe D. Creveling, Joseph A. Bower, Walter G. Mortland, Robert C. Winmill, Richard C. Paterson, and refused to recognize the validity of the election of the other five persons above named, namely: Joseph J. [fol. 780] Bodell, David Boyd-Smith, Hubert E. Howard, Geoffrey Mellor and William C. Tringham. Furthermore, a majority of the nine directors declared by the said Joe D. Creveling to have been the only ones elected to the Board, viz., Gano Dunn, Joe D. Creveling, Joseph A. Bower, Walter G. Mortland, Robert C. Winmill and Richard C. Paterson, refuse to recognize the validity of the election of said other five, namely: Messrs. Bodell, Boyd-Smith, Howard, Mellor and Tringham.

9. At said meeting, Mr. Creveling refused to recognize the validity of the election of William G. Maguire as president and of William C. Tringham as treasurer, and was and is supported in such refusal by a majority of the nine persons he declared were elected as directors. The said

Joe D. Creveling and a majority of said nine persons claim that the office of President is held by Joe D. Creveling, while William G. Maguire, a minority of said group of nine, and all of the group of five above mentioned claim that W. G. Maguire is the President, having been validly elected at said annual meeting.

10. The said Joe D. Creveling and Louis F. Sperry and said majority of the group of nine above mentioned claim that the office of Treasurer is held by Louis F. Sperry and refuse to recognize the validity of the election thereto of William C. Tringham, while William C. Tringham, a minority of the group of nine and all of the group of five claim that said William C. Tringham was duly and validly elected to the office of Treasurer.

[fol. 781] 11. Said Joe D. Creveling and Louis F. Sperry are holding the offices of President and Treasurer, respectively, without right and are preventing William C. Maguire and William C. Tringham from acting in said offices and Joe D. Creveling and said majority of the group of nine above mentioned have refused and continue to refuse to recognize that the five above mentioned, viz., Messrs. Bodell, Boyd-Smith, Howard, Mellor and Tringham, were duly and validly elected to the Board. Joe D. Creveling and said majority of the group of nine contend that the Board consists only of the nine above mentioned.

12. Your Orator says that unless this Honorable Court hear and determine the validity of the election of the directors in said group of five above mentioned, and hear and determine the validity of the election of William G. Maguire, as President and William C. Tringham, as Treasurer, and determine the persons entitled to the offices of President and Treasurer, the respondent corporation and your Orator, as a substantial stockholder thereof, will be greatly and irreparably injured and damaged.

Wherefore, your Orator, being without remedy save in this Honorable Court, prays as follows:

(1) That a subpoena issue directed to the respondent Panhandle Eastern Pipe Line Company commanding it to appear herein and answer this bill of complaint.

(2) That the Chancellor hear and determine the validity of the election of Joseph J. Bodell, David Boyd-Smith,

Hubert E. Howard, Geoffrey Mellor and William C. Tringham to the Board of Directors of Panhandle Eastern Pipe [fol. 782] Line Company at the annual meeting of stockholders held on March 11, 1940, and declare that said persons were duly and validly elected to said Board of Directors.

(3) That the Chancellor hear and determine the validity of the election of William C. Maguire to the office of President and William C. Tringham to the office of Treasurer of the respondent corporation, and determine that they are the persons entitled to said offices and not Joe D. Creveling and Louis F. Sperry, claimants to said offices.

(4) That an order be entered herein providing that copies of this bill of complaint be served upon the corporate resident agent of Panhandle Eastern Pipe Line Company, namely, U. S. Corporation Company, 19 Dover Green, Dover, Delaware, and that such service shall be deemed to be service upon the corporation and upon the persons whose title to office is contested as aforesaid and upon the persons claiming the offices as aforesaid.

(5) That such further proceedings be had under the provisions of Section 31 of the General Corporation Law as the Chancellor shall deem necessary and proper;

(6) And for such other and further relief as to the Chancellor shall seem meet and proper.

Missouri-Kansas Pipe Line Company, by (Sgd.) Wm. C. Tringham, Secretary.

Attest: (Sgd.) Wm. C. Tringham, Secretary.

Arthur G. Logan, Logan and Duffy, Solicitors for Complainant.

[fol. 783] *Duly sworn to by Wm. C. Tringham. Jurat omitted in printing.*

[fol. 784] IN UNITED STATES DISTRICT COURT

MOTION OF COLUMBIA OIL & GASOLINE CORPORATION TO DISMISS APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY—Filed March 29, 1940

Columbia Oil & Gasoline Corporation, a defendant in the above entitled cause, by Daniel O. Hastings, its attorney,

now moves the Court, upon the affidavits of Joe D. Creveling, Gano Dunn and Don M. Wilson annexed hereto, and upon the proceedings heretofore had in the above entitled cause, to dismiss the alleged application of Panhandle Eastern Pipe Line Company for leave to become a party hereto and for other relief, made herein on or about March 23, 1940, on the ground that said application was not authorized by Panhandle Eastern Pipe Line Company, that the attorneys whose names appear on said application as attorneys for Panhandle Eastern Pipe Line Company were not authorized by that company to act in its behalf in bringing or prosecuting such application or otherwise, and that Gano Dunn, appointed by this Court in the consent decree entered in the above entitled cause on January 29, 1936, as trustee of all the stock of Panhandle Eastern Pipe Line Company owned by Columbia Oil and Gasoline Corporation, duly voted said shares of stock on all matters on which he voted said stock at the annual meeting of the stockholders of Panhandle Eastern Pipe Line Company held on March 11, 1940, as shown by the official stenographic tran-
[fol. 785] script of the proceedings which occurred at said meeting, in accordance with the provisions of said consent decree and pursuant to valid directions from Columbia Oil & Gasoline Corporation.

(Sgd.) Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation, 400 Industrial Trust Building, Wilmington, Delaware.

[fol. 786] Exhibits annexed to foregoing motion of Columbia Oil & Gasoline Corporation, same as exhibits annexed to motion of Columbia Gas & Electric Corporation and not repeated here, viz.:

1. Affidavit of Joe D. Creveling annexed to motion of Columbia Gas & Electric Corporation. [See page 628.]

2. Minutes of annual meeting of stockholders of Panhandle Eastern Pipe Line Company held March 11, 1940. [See page 631.]

3. Copy of By-laws of Panhandle Eastern Pipe Line Company. [See page 747.]

4. Notice of annual meeting of stockholders of Panhandle Eastern Pipe Line Company to be held March 11, 1940, at Dover, Del. [See page 764.]

5. Affidavit of Don M. Wilson. [See page 768.]

6. Copy of bill of complaint filed under Section 31 of the Corporation Laws of the State of Delaware in the Court of Chancery of the State of Delaware in and for New Castle County. [See page 777.]

[fol. 787] AFFIDAVIT OF GANO DUNN IN SUPPORT OF MOTION OF COLUMBIA OIL TO DISMISS APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY.

STATE OF NEW YORK,
County of New York, ss:

Gano Dunn, being duly sworn, deposes and says:

I am the Trustee of the shares of stock of Panhandle Eastern Pipe Line Company, beneficially owned by Columbia Oil & Gasoline Corporation, appointed by this Court in the Consent Decree entered in the above entitled cause on January 29, 1936, and I am duly acting as such Trustee pursuant to the provisions of said Consent Decree.

The provisions of said Consent Decree relating to my appointment as such Trustee and the powers vested in me with respect to such stock are as follows:

"That Gano Dunn is hereby nominated, constituted and appointed trustee for the purposes and with the powers and duties set forth in this Section III;

That within 10 days after the entry of this decree Columbia Oil shall execute, and deposit with said trustee the agreements and offers executed by it in accordance with, its agreements set forth in Section V of the stipulation pursuant to which this decree is entered;

That within 10 days after the entry of this decree Columbia Oil shall transfer all of its stock now owned and thereafter all stock subsequently acquired in Panhandle Eastern, having present or potential voting rights, to said trustee to hold the legal title to said stock and to exercise all the rights and privileges incidental to the absolute ownership thereof upon the following terms and conditions:

[fol. 788] (a) To vote said stock for the election of as many directors of Panhandle Eastern as the number of shares thereof may be entitled to elect; Provided, that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recom-

mended by the Beneficial owner of said stock, in conference and with the advice of the trustee, but not including any of the individual defendants herein or any one (except with the approval of the trustee and this Court) who after January 1, 1931, has been or hereafter becomes an officer, director, agent or employee of Columbia Gas; and that, as to the directors so selected, the trustee is empowered to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree; subject, however, in this as well as in the exercise of all other powers to the authority of this Court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder;

(b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree;

(c) To deposit for safe-keeping the certificates for such stock with such bank or trust company as he may select and to issue, or arrange for the issuance, by such bank or trust company to the defendant Columbia Oil, of receipts for the stock so deposited in such form as the trustee may approve;

* (d) To receive reasonable compensation, the amount thereof to be approved by this Court at not less than $15,000.00 per annum, for all services rendered by him as trustee, and to be reimbursed for any expenses incurred by him in the performance of his duties hereunder, upon quarterly accounts to this Court, which, when approved by the Court, shall be paid in equal shares by the defendants Columbia Gas and Columbia Oil;

[fol. 789] (e) To pay over to Columbia Oil all dividends received upon said stock, except that dividends in the form of stock having present or potential voting rights shall be

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* This paragraph (d) in respect to compensation and the method of its approval was subsequently modified by an amendment to the decree entered June 19th, 1936. G. D.

retained by the trustee subject to the same terms and conditions as the other shares held hereunder;

(f) To exercise all rights to subscribe to additional stock or other securities of Panhandle Eastern as Columbia Oil may direct;

(g) To report to this Court semi-annually; and to account for any action hereunder only in proceedings in this Court, any further order of this Court entered upon notice to such trustee and to the parties hereto shall be full protection to him for any action taken pursuant thereto, and the trustee shall not be personally responsible for mistakes in judgment or mistakes of law or fact in the execution of his duties hereunder but only for lack of good faith;"

On March 5, 1940, and prior to the annual meeting of the stockholders of Panhandle Eastern Pipe Line Company, which was held on March 11, 1940, I received from Mr. Don M. Wilson, Vice-President of Columbia Oil & Gasoline Corporation, acting in the vacancy of the office of President, instructions that I should vote at said meeting the shares of stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation, and standing in my name as Trustee, in favor of the amendment to the Articles of Incorporation proposed by the Board of Directors of Panhandle Eastern Pipe Line Company for adoption by the shareholders at said annual meeting; that as to all other matters, except directors, which might come before said meeting, I should vote said shares as, in my discretion, seemed best for the interest of Panhandle Eastern Pipe Line Company, and generally to support said management; that in case any matters were presented at the meeting on which I had any doubt as to how to vote, I could adjourn the meeting for a sufficient time to confer by telephone with the representatives of Columbia Oil & Gas- [fol. 790] oline Corporation. As regards the directors of Panhandle Eastern Pipe Line Company which the stock of Panhandle Eastern Pipe Line Company, beneficially owned by Columbia Oil & Gasoline Corporation, was entitled to elect, Mr. Wilson, representing Columbia Oil & Gasoline Corporation recommended in conference with me certain persons as directors of Panhandle Eastern Pipe Line Company and from among the persons so recommended I se-

lected, in addition to myself, as the 6 of the 9 directors of Panhandle Eastern Pipe Line Company which the stock of Panhandle Eastern Pipe Line Company beneficially owned by Columbia Oil & Gasoline Corporation was entitled to elect, the following persons: Joseph A. Bower, Joe D. Creveling, Walter G. Mortland, Richard C. Patterson, Jr., and Robert C. Winmill. Thereafter, and prior to the annual meeting of stockholders of Panhandle Eastern Pipe Line Company aforementioned, I received two letters from Mr. Wilson, representing Columbia Oil & Gasoline Corporation, one, dated March 8, 1940, recommending that I elect the aforementioned persons selected by me as aforesaid as directors of Panhandle Eastern Pipe Line Company, and the other, dated March 9, 1940, modifying his previous instructions to the extent that I should refrain from voting the shares of stock of Panhandle Eastern Pipe Line Company, held by me as Trustee, at said annual meeting on the amendment to the Articles of Incorporation of Panhandle Eastern Pipe Line Company which had been proposed by its board of directors.

I attended the annual meeting of the stockholders of Panhandle Eastern Pipe Line Company held on March 11, 1940, at the office of the Company at No. 19-21 Dover Green, [fol. 791] Dover, Delaware. At such meeting I voted the stock of Panhandle Eastern Pipe Line Company, beneficially owned by Columbia Oil & Gasoline Corporation, on various matters which came before the meeting pursuant to the authority vested in me by the above-mentioned Consent Decree and pursuant to the aforementioned instructions, as modified, which I had received from Mr. Wilson as Vice-President of Columbia Oil & Gasoline Corporation. The record of my voting at said annual meeting is contained in the transcript of the proceedings which occurred at said meeting, which transcript, certified as true and correct by Harry J. Blam, official shorthand reporter for the Delaware law courts, is attached to the affidavit of Joe D. Creveling, dated March 28, 1940, which is being submitted in support of the motion of Columbia Oil & Gasoline Corporation to dismiss the alleged application of Panhandle Eastern Pipe Line Company for leave to become a party to the above entitled cause and for other relief.

This affidavit is also made in support of said motion of Columbia Oil & Gasoline Corporation to dismiss said al-

leged application of Panhandle Eastern Pipe Line Company.

(Sgd.) Gano Dunn.

Subscribed and sworn to before me this 28th day of March, 1940. (Sgd.) John Vogt, Notary Public, Queens County, No. 1979, Reg. No. 5231. Certificate filed in New York Co. No. 25, Reg. 1-V-10. Commission expires March 30, 1941. (Notarial Seal.)

[fol. 792] IN UNITED STATES DISTRICT COURT

OPINION OF THE COURT ON MOTION TO DISMISS APPLICATION OF PANHANDLE EASTERN PIPE LINE COMPANY—Filed April 6, 1940

Motion to dismiss application to become a party for a limited purpose.

In the anti-trust suit of United States v. Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, and others, a consent decree was entered by this court January 29, 1936. The closing paragraph of the decree provides:

"* * * that Panhandle Eastern, [Panhandle Eastern Pipe Line Company] upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

The sole question raised by the motion to dismiss is whether Panhandle Eastern has made a "proper application" to become a party to this suit. March 23, 1940, a document in the form of an unverified application to become a party was filed. This document is signed "Panhandle Eastern Pipe Line Company By Arthur G. Logan". Immediately below this signature appear "Arthur G. Logan, Logan & Duffy, Attorneys for Petitioner, 303 Delaware Trust Building, Wilmington, Delaware". Below and to the left of these signatures the following names of counsel are typed: "Russell Hardy", "Robert J. Bulkley", "Arthur G. Logan".

The propriety of the application to became a party turns upon the terms of the consent decree. By Section III of that

decree Gano Dunn was appointed Trustee for the purposes and with the powers and duties set forth in that section. The decree further provides:

[fol. 793] "That within 10 days after the entry of this decree Columbia Oil shall transfer all of its stock now owned and thereafter all stock subsequently acquired in Panhandle Eastern, having present or potential voting rights, to said trustee to hold the legal title to said stock and to exercise all the rights and privileges incidental to the absolute ownership thereof upon the following terms and conditions:

(a) To vote said stock for the election of as many directors of Panhandle Eastern as the number of shares thereof may be entitled to elect; *Provided*, that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recommended by the beneficial owner of said stock, in conference and with the advice of the trustee, and that, as to the directors so selected, the trustee is empowered to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree; subject, however, in this as well as in the exercise of all other powers to the authority of this Court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder;

(b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such direc ns are inconsistent with the purposes of this decree;"

The business of a corporation is conducted by its board of directors and officers. The control of Panhandle Eastern was vested in the Trustee. He was one of the directors. He shared with Columbia Oil in the selection of the others. He was empowered to remove any of the other directors and replace such directors by others of his own choosing upon his own motion. As the board of directors chose the officers, the Trustee was the final word in the conduct of the busi-

ness of Panhandle Eastern. This control should be borne in mind in construing paragraph (b) of the decree.

[fol. 794] The selection of Gano Dunn as Trustee was made by the Attorney General of the United States as the person best qualified to serve in a very difficult and exacting position from a group of names submitted to him.

Notice of the regular annual stockholders' meeting of Panhandle Eastern to be held March 11, 1940 was duly sent to stockholders. It notified them that the proposed business to be considered at the meeting would be the election of directors for the ensuing year, an amendment of the certificate of incorporation, and such other business as might properly come before the meeting.

Mindful of paragraph (b) of Section III of the decree, Gano Dunn obtained from the executive head of Columbia Oil, the beneficial owner of the stock of Panhandle Eastern held by him, directions as to voting said stock at the annual meeting. March 5, 1940, Don M. Wilson, a vice president of Columbia Oil and acting president, directed Gano Dunn to vote the shares of stock held by him in favor of the amendment to the articles of incorporation proposed by the Board, and as to other matters, excepting the election of directors, to vote said shares "as, in his discretion, seemed best for the interest of Panhandle Eastern Pipe Line Company and generally to support the management; that, in case any matters were presented at the meeting on which he had any doubt as to how to vote, he could adjourn the meeting for a sufficient time to confer by telephone with the representatives of Columbia Oil & Gasoline Corporation". March 8, 1940, the board of directors of Columbia Oil adopted a resolution expressly approving said directions [fol. 795] and also approving a letter from Wilson to Dunn containing the following directions:

"DEAR MR. DUNN:

After consultation with you, as Trustee holding the voting stock in Panhandle Eastern Pipe Line Company, which is owned by this Corporation, and with your advice, we recommend the following individuals for your selection as Directors of Panhandle Eastern Pipe Line Company, and request that you elect them as such by vote of the stock which you hold as Trustee:

Joseph A. Bower, 165 Broadway, New York City
Joe D. Creveling, 90 Broad Street, New York City

Gano Dunn, 80 Broad Street, New York City
Walter G. Mortland, 37 East 64th St., New York City
Richard C. Patterson, Jr., 1270 Sixth Avenue, New York City
Robert C. Winmill, 1 Wall Street, New York City.

Very truly yours, (Signed) D. M. Wilson, Vice President."

Before determining upon the six directors named in the above letter, Columbia Oil in conference with Dunn recommended certain persons as directors and from among the number so recommended Dunn selected the six above named as the six of the nine directors of Panhandle Eastern which the stock beneficially owned by Columbia Oil was entitled to elect.

From the foregoing, it appears that Gano Dunn attended the annual meeting of March 11 girded with his own authority as Trustee, supplemented by all the directions from Columbia Oil that could have been anticipated in the normal course of human events.

March 11, 1940, at the opening of the annual stockholders' meeting, Creveling, President of Panhandle Eastern, took the Chair and called the meeting to order as provided in the by-laws. The Chairman announced the presence of a quorum. Thereupon, Logan, who appeared as a stock- [fol. 796] holder, moved that Dixon, an associate of Maguire, be made Chairman of the meeting "from this time forward". Creveling declared the motion out of order. Thereupon, Logan took an appeal from the ruling of the Chairman. A vote was taken. Gano Dunn voted to uphold the Chair while Logan and his associates voted the contrary. Creveling announced that his ruling had been upheld.

Shortly thereafter, Logan moved that Article 11 of the by-laws be amended to read:

"The property and business of this corporation shall be managed by its board of directors, consisting of 14 persons."

This drastic action of increasing the number of directors from 9 to 14 was proposed without notice thereof, and evidently with the intent to acquire control of a large and valuable property. The Chairman declared the motion out

of order in view of Article 42 of the by-laws, providing that the by-laws may be altered or amended "if notice of the proposed alteration or amendment be contained in the notice of the meeting." An appeal was taken with the same result as in preceding instances.

Motions were made that the Class B stock be not allowed to vote; that officers of the company be chosen by the stockholders; that their salaries be fixed by the stockholders; that Maguire be made president and Tringham treasurer of the company. These motions were disposed of as the others had been. In each instance Dunn voted the majority of the voting stock against the motions, and Logan and his associates voted for the motions.

[fol. 797] Hand moved that Panhandle Eastern become a party to the suit of Missouri-Kansas Pipe Line ompany and Dammann against the Columbia companies. This motion was similarly disposed of. Hand further moved that the Class A stock of Panhandle Eastern be redeemed. This motion met the same fate.

The following motion concisely states the position of Logan and his associates throughout the meeting:

"Mr. President, I now move that this corporation refuse to accept any vote of Mr. Gano Dunn on any question unless he first establishes by competent proof that he has been directed by Columbia Oil and Gasoline Corporation to cast his vote in accordance with the way he may cast it due to the fact that this corporation is aware of the limitation upon his powers."

Later Hand moved that Panhandle Eastern be directed to bring six suits as suggested in a letter of January 15, 1940 from Missouri-Kansas Pipe Line Company to Panhandle Eastern. The fourth item of this letter was an instruction that Panhandle Eastern intervene in this anti-trust suit by the United States pending in this court. At this meeting a resolution was offered by Hand that Panhandle Eastern be directed to make the present application. Gano Dunn, holding a majority of the voting stock of Panhandle Eastern, voted against the resolution and it was accordingly defeated.

It was further moved:

"That this corporation will employ Robert J. Bulkley of Cleveland, Ohio, Russell Hardy of Washington, D. C.,

and Arthur Logan of Wilmington, Delaware, as its attorneys to take action provided for herein;" and further, "that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services".

[fol. 798] Thereafter, the meeting adjourned, although as to adjournment Logan objected that Gano Dunn was not qualified to vote without producing before the meeting specific instructions from Columbia Oil.

After adjournment Logan and his associates held a meeting of their own. No quorum was present. Holders of a minority of the stock of Panhandle Eastern, either in person or by proxy, were the only persons present. The motions of Logan and of his associates, defeated at the regular meeting, were resubmitted at the subsequent meeting, and purported to be passed.

March 20, 1940, a special meeting of the Board of Directors of Columbia Oil was held. The Chairman stated that he had received an official stenographic transcript of the proceedings of the annual meeting of stockholders of Panhandle Eastern of March 11, 1940. Upon consideration of those minutes and of the manner in which Gano Dunn, Trustee, had voted the stock in Panhandle Eastern, it was resolved:

"That all of the votes and all of the positions taken by said Gano Dunn as Trustee or otherwise at said stockholders' meeting be and the same hereby are in all respects approved, ratified and confirmed".

In construing the language of the consent decree, I find that the votes cast by Gano Dunn were authorized by the powers conferred upon him by the consent decree and that his votes were well within the directions given to him by Columbia Oil. From this finding, it follows that the so-called application filed in this proceeding was not authorized by Panhandle Eastern or by any responsible body having control of said corporation.

[fol. 799] The motion to dismiss the alleged application of Panhandle Eastern for leave to become a party hereto and for other relief must be granted for the following reasons:

1. Said application was not authorized by Panhandle Eastern.

2. The attorneys whose names appear on said application as attorneys for Panhandle Eastern were not authorized by that company to act in its behalf in filing such application.

3. Gano Dunn, Trustee, duly voted the shares of stock of Panhandle Eastern on all matters on which he voted at the annual meeting of March 11, 1940, in accordance with provisions of said consent decree, and pursuant to valid directions from Columbia Oil.

And order may be submitted.

(Sgd.) John P. Nields, J.

April 6, 1940.

[fol. 800] IN UNITED STATES DISTRICT COURT

APPLICATION OF MISSOURI-KANSAS PIPE LINE COMPANY IN BEHALF OF PANHANDLE EASTERN PIPE LINE COMPANY FOR RELIEF TO WHICH SAID COMPANY IS ENTITLED UNDER SECTIONS IV AND V OF THE DECREE FILED HEREIN JANUARY 29, 1936—Filed April 16, 1940

Missouri-KansasPipe Line Company, on its own behalf as a stockholder and on behalf of all other stockholders similarly situated of Panhandle Eastern Pipe Line Company, makes this application in behalf of and in the name of the latter company for relief to which the latter company is entitled under Sections IV and V of the Decree filed herein January 29, 1936, and respectfully shows to this Court and alleges:

I. Panhandle Eastern Pipe Line Company above mentioned (hereinafter called "Panhandle Eastern") at all times hereinafter mentioned was and now is a corporation organized and existing under the laws of Delaware and is referred to in the Decree filed herein January 29, 1936.

Missouri-Kansas Pipe Line Company above mentioned (hereinafter called "Mokan") at all times hereinafter mentioned was and now is a corporation organized and existing under the laws of Delaware, and at all times hereinafter mentioned has owned, and now owns, a large part of the common stock of Panhandle Eastern.

Michigan Gas Transmission Corporation hereinafter mentioned (hereinafter called "Michigan Gas") since on

or about January 31, 1936 has been and now is a corporation organized and existing under the laws of Delaware.

[fol. 801] II. Mokan is a stockholder of Panhandle Eastern and has been a holder of stock in said corporation during part or all of the time of the transactions referred to herein. Mokan is the owner and holder of 339,275 shares of the common stock of Panhandle Eastern of which 324,326 shares devolved upon it by operation of law. This application is not a collusive one to confer on a Court of the United States jurisdiction of any action or in any respect of which it would not otherwise have had jurisdiction. Mokan has sought to have Panhandle Eastern and the directors and stockholders of Panhandle Eastern bring or cause to be brought an action or actions for the relief prayed for herein, but said directors, stockholders and Panhandle Eastern have wrongfully and wilfully neglected and refused to enforce the rights asserted herein as is more particularly set forth hereinafter.

III. On March 6, 1935, the above named plaintiff, United States of America (hereinafter called "United States"), commenced this suit in equity against the defendants herein by filing a Petition herein, alleging generally that the said defendants had entered into a conspiracy to violate and had violated the Anti-Trust Laws of the United States.

IV. Thereafter on October 30, 1935, United States filed and Amended and Supplemental Petition (hereinafter called "Amended Petition"), reference to which is hereby made as if herein fully and at length set forth.

[fol. 802] V. Thereafter on January 29, 1936, a stipulation was duly entered into between United States and the defendants herein consenting to the entry of a Decree against said defendants, and on said day a Decree, to which was attached as a part thereof the aforesaid stipulation, was duly made and entered in this Court against all of the defendants herein, reference to which stipulation and Decree is hereby made as if herein fully and at length set forth.

VI. Said Decree provides among other things as follows:

"Section V. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict com-

pliance herewith and the punishment of evasion hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

VII. This application is made in behalf of Panhandle Eastern in accordance with the terms of said Section V in order to make Panhandle Eastern party hereto for the limited purpose of enforcing the rights conferred by Section IV of said Decree.

VIII. Section IV of said Decree is as follows (italics ours):

"That the defendants be and they are hereby *perpetually enjoined* from restraining or interfering in any manner in the freedom of Panhandle Eastern to contract or to finance or arrange the financing of all contracts, extensions (including the proposed new line to Detroit, whether or not built and owned by it), repairs, maintenance, service, or improvements necessary in its business through or with any firm, person, or corporation with whom it may choose to deal (and to that end any such financial or contractual [fol. 803] arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter);

"That if such contracts be made with or financial assistance be secured from Columbia Gas, such contracts may be made or financial assistance furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or *potentially,* confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investments; and in the event that Columbia Gas shall, with respect to any contract or any contractual rights of any kind whatsoever or any property held as security of used in connection with any contract, in *any* way prevent the *free* transportation, sale, and distribu-

tion of gas by Panhandle Eastern, then upon application this Court or any Court of competent jurisdiction Panhandle Eastern shall have the right (1) to the *immediate appointment of a trustee to hold such contract rights or property* subject to the purposes and provisions of this decree; (2) to immediate *specific* performance of *any* and *all* contracts with Columbia Gas; and (3) to *immediate* injunction, both temporary and *final,* as well as any other appropriate remedy at law or in equity, including any remedy hereunder."

IX. Prior to the making and entry of the aforesaid Decree, Panhandle Eastern, which was then completely under the control of the defendants herein, had entered into a contract or agreement with The Detroit City Gas Company, hereinafter sometimes referred to as the Detroit Contract, by the terms of which Panhandle Eastern had agreed to supply natural gas to the City of Detroit, Michigan, for a period of 15 years, which contract is the same contract mentioned and described in said Section IV of the Decree herein.

[fol. 804] X. At the time the said Detroit Contract was entered into, as well as at the time the said Decree was made and entered herein, the eastern terminus of the Panhandle Eastern natural gas pipe line was at a point called Dana, in the State of Indiana, situated near the Illinois-Indiana state boundary line, which point is indicated on a map annexed hereto, made a part hereof and marked "Exhibit A". At said times there was no pipe line connection between the said eastern terminus of the Panhandle Eastern pipe line at Dana, Indiana, and the City of Detroit, Michigan, a distance of more than three hundred miles. Said map shows the Panhandle Eastern pipe line and the Columbia System as they existed prior to the commencement of this suit.

XI. The said Detroit Contract contained, among other things, provision for (a) the construction by Panhandle Eastern of a pipe line extension from the eastern terminus of the then existing Panhandle Eastern pipe line to the City of Detroit, Michigan (hereinafter sometimes referred to as the "Detroit extension"), (b) the reinforcement of the existing pipe line, and (c) the financing of said con-

struction and reinforcement, in terms and words as follows:

"Inasmuch as the carrying out of this Agreement depends upon the construction of a pipe line connecting the eastern terminus of Seller's existing pipe line at the Illinois-Indiana state line with the City of Detroit, as well as on the reinforcement of the present pipe line of Seller, since the present line of Seller is inadequate to deliver the quantity of gas called for by this Agreement without reinforcements requiring the expenditure of a large sum of money, and Seller represents that its financial position is such that it cannot construct either said connecting line or said rein- [fol. 805] forcements without outside financing, it is expressly understood and agreed that, unless the construction of such connecting line shall have been financed on or before February 1, 1936, and unless a contract shall be entered into providing for the financing of said reinforcement of Seller's present pipe line before said date, this Agreement shall be null and void and no obligations hereunder shall exist on the part of either party hereto. Seller agrees to use its best efforts to arrange for financing the construction of such connecting pipe line, and such reinforcement of its present pipe line, but does not undertake any firm commitment to do so. If such financing shall be arranged by said date, Seller will construct and place said connecting pipe line in condition for operation on or before the Date of Initial Delivery."

XII. Because of the existence of said contract, and contemplating the construction of said extension, said Decree filed herein January 29, 1936 (paragraph IV) provided for alternate methods of financing, and further provided that if the Detroit extension and the necessary reinforcement to the main line of Panhandle Eastern were constructed with financial assistance secured from Columbia Gas, such

"financial assistance (must be) furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment;"

XIII. Notwithstanding said Decree and the further provision therein contained that the defendants were perpetually enjoined from acquiring, directly or indirectly, the whole or any part of the property or assets of Panhandle Eastern, two days after the entry of said Decree, namely, on January 31, 1936, defendant Columbia Gas, for its own benefit and use, directly acquired from Panhandle Eastern [fol. 806] that part of the contract under which Panhandle Eastern owned the right to construct, own and operate the extension from the eastern terminus of the Panhandle Eastern line to the City of Detroit, and by means of its complete control of the Board of Directors of Panhandle Eastern caused the necessary corporate action to be taken to permit such acquisition. Said corporate action was taken before Gano Dunn, Trustee appointed by and under said Decree herein had qualified and taken office and before Mokan was represented on the Board of Panhandle Eastern, and was taken at directors' meeting superintended by Charles A. Munroe, one of the defendants herein. Through its wholly owned subsidiary Michigan Gas, Columbia Gas has constructed and now owns and operates said extension, and has received and is now receiving excessive profits therefrom, all in violation of the express provisions of the decree aforesaid.

XIV. By reason of its ownership and operation of said Detroit extension, Columbia Gas has been enabled to take over, dominate and control the markets available to said Detroit extension in Indiana and southeastern Michigan (except the City of Detroit), and to restrain trade and commerce in natural gas by Panhandle Eastern in the said markets and in the Ohio markets of the Columbia companies adjacent to said extension. The map which is hereto annexed and marked "Exhibit B" shows the territory in and about the State of Indiana with the pipe lines of Panhandle Eastern and of the Columbia System as they existed prior to the commencement of this suit. The annexed map which is marked "Exhibit C" shows the same territory and the [fol. 807] said lines as they existed on January 29, 1936, the date of the above mentioned Decree herein. The annexed map which is marked "Exhibit D" shows the location of the said Detroit extension, together with various laterals therefrom which Columbia Gas has constructed to connect with existing artificial and mixed gas lines which are also

shown on said map, such extension of the Columbia System having occurred since the entry of said Decree herein and in order that Columbia Gas might control the markets in the aforesaid territory and enlarge its monopoly so as to include said Indiana and Michigan territory, and to restrain trade and commerce by Panhandle Eastern therein. The City of Toledo, in the State of Ohio, is twelve miles east of the Detroit extension as shown on said map, and is served by Columbia Gas from its Ohio system. By owning and operating said Detroit extension, Columbia Gas has prevented Panhandle Eastern from competing in the Toledo market, as well as in the other markets in the territory available to said extension, and to restrain trade and commerce by Panhandle Eastern therein and has prevented Panhandle Eastern from freely transporting, selling and distributing gas within said territory. Under the terms of a contract between Michigan Gas and Panhandle Eastern, approved by said Gano Dunn as Trustee under said Decree herein, and by the Columbia Gas-dominated Board of Panhandle Eastern, allocation is made of the price received from the City of Detroit so that an unfair and unreasonable part thereof is paid to and retained by Michigan Gas, all to the detriment of Panhandle Eastern, its stockholders, and the public.

[fol. 808] XV. In addition to the moneys required for the construction of the aforesaid extension, Panhandle Eastern required, for the fulfilment of said Detroit contract, further moneys for the reinforcement of its own line. The above mentioned Decree herein expressly provided that if such financial assistance were procured from Columbia Gas, it must be furnished, as hereinabove set forth, only upon terms which did not (italics ours)

"in *any* way directly or *indirectly*, presently or *potentially* confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern."

Columbia Gas violated said express provision by causing its controlled affiliate, Columbia Oil, to acquire an additional 80,000 shares of the common stock of Panhandle Eastern shortly after the entry of the said Decree with moneys advanced by Columbia Gas, namely, the sum of $2,000,000, which Columbia Gas advanced to Columbia Oil for the express purpose of enabling the latter to make such payment

and to acquire such stock. Said funds when received by Panhandle Eastern were used by it for the said reinforcement of its said line. Such purchase of additional stock gave to Columbia Oil a majority of the common stock of Panhandle Eastern then outstanding, and Columbia Oil still owns such majority, and still owes Columbia Gas said $2,000,000.

While Columbia Oil was and is permitted, under said Decree of this Court to acquire stock in Panhandle Eastern, such permission was made expressly subject to the further terms of said Decree, including the injunction against acquisition by Columbia Gas of any interest in Panhandle [fol. 809] Eastern. The device herein set out was intended to evade the restraint imposed on Columbia Gas by said Decree, and to enable Columbia Gas to acquire an indirect or a potential interest in stock of Panhandle Eastern having voting rights, and substantial control thereof, all in violation of the express terms of said Decree. At all times since the entry of said Decree the Board of Directors of Panhandle Eastern has been composed of nine persons and since at least the annual meeting of March of 1937, five of said nine have been nominees of Columbia Oil. Said five nominees of Columbia Oil and Gano Dunn, the Trustee aforesaid, have at all times done the bidding of Columbia Oil and Columbia Gas and have at no time taken any steps which would have been for the best interest of Panhandle Eastern if in doing so the interest of Columbia Gas or any of its associates or affiliates would have been injured.

XVI. Columbia Oil was initially organized by Columbia Gas for the purpose of holding certain of the properties and securities of Columbia Gas. The original Board of Directors of Columbia Oil were selected by Columbia Gas and its officers and directors. The management thus put in charge of Columbia Oil by Columbia Gas at its inception has perpetuated itself in control of Columbia Oil at all times since its organization through the solicitation of management proxies and the use of said proxies to continue the same management in office. This has been rendered possible by virtue of the fact that a majority of the stockholders of Columbia Oil are stockholders of Columbia Gas, and the officers of Columbia Oil have been stockholders of [fol. 810] both Columbia Oil and Columbia Gas practically from the organization of Columbia Oil. At the 1939 Annual

stockholders' meeting of Columbia Oil the management proxy committee cast a vote for the same management which consisted of 99.9% of the total votes cast, of which percentage 82.9% in turn represented stock owned and held by persons who were also stockholders of Columbia Gas. The two corporations have at all times been in effect identical in respect of management and control, and have at all times combined and conspired as hereinafter set forth to restrain trade and commerce in natural gas within the States in which Columbia Gas operated and operate directly and through subsidiaries. Through the control which Columbia Gas has at all times had over the business and affairs of Columbia Oil, through the perpetuation of the Columbia Gas management in office and the vote by Columbia Gas stockholders as aforesaid, Columbia Gas has been able to have Columbia Oil join with it in the combination and conspiracy hereinafter set forth and has at all times been able to use Columbia Oil, its officers and directors, as agents and instrumentalities of Columbia Gas in said combination and conspiracy to restrain the sale of natural gas in the territories above mentioned and to aid Columbia Gas to monopolize and attempt to monopolize the trade and commerce in natural gas in the territories aforesaid.

XVII. The limitations imposed upon the above mentioned Trustee, Gano Dunn, by the provisions of sub-paragraphs (a) and (b) of Section III of the Decree above mentioned and the willingness of the said Gano Dunn to act as the agent and instrumentality of Columbia Gas and Columbia [fol. 811] Oil have made it impossible for said Trustee to serve in accordance with the purposes of said Decree as an effective insulator against the control theretofore exercised by Columbia Gas, through Columbia Oil, over Panhandle Eastern and at all times since the entry of said decree until the present time, Columbia Gas has exercised control and domination through Columbia Oil over Panhandle Eastern in restraint of trade in natural gas in the territories aforesaid and has thereby protected and strengthened its monopoly in the States of Ohio, Michigan, Indiana and adjoining territories.

XVIII. In anticipation of further financing of Panhandle Eastern for the reinforcements of its line and the construction of said Detroit extension, Columbia Gas and Columbia Oil, in violation of said Section IV of said Decree,

undertook to and did cause to be issued to Columbia Oil the following shares of preferred stock of Panhandle Eastern:

(1) 100,000 shares of Class A, $6. accumulative and participating preferred stock having a par value of $100. per share, each of said shares having voting rights share for share with the common stock on all matters excepting the election of directors.

(2) 10,000 shares Class B, $6. preferred stock, of the par value of $100 per share. This preferred stock is entitled to vote share for share with the common, and in addition thereto is entitled, as a class, to elect two directors of Panhandle Eastern. Said 10,000 shares was created and issued to Columbia Oil pursuant to the provisions of a settlement agreement entered into between the Columbia Gas and Columbia Oil and Receivers of Mokan. In the negotiations leading up to said settlement agreement, officers of Columbia Gas stated that they would not make a settlement with the Mokan Receivers of claims which said Mokan Receivers then had against the Columbia Gas and Columbia Oil, unless said Mokan Receivers would agree that said issue of Class B preferred stock be created and issued to Columbia Oil and be non-redeemable and non-callable and containing the provision that it should have [fol. 812] the right to elect two directors of Panhandle Eastern. Said officers of Columbia Gas on its behalf stated that neither they nor Columbia Gas would agree to any settlement with said Receivers of Mokan unless Columbia Gas and Columbia Oil were given control on the Board of Panhandle Eastern. Said negotiations were had and said statements made after the entry of said Decree aforesaid and were directly contrary to the terms and provisions of said Decree.

XIX. The said 80,000 shares of common stock of Panhandle Eastern, when so acquired by the Defendants herein, and also said two classes of preferred stock, namely, 100,000 shares of Class A and 10,000 shares of Class B, were turned over to, and legal title thereto is now held by said Gano Dunn as Trustee under said Decree.

XX. After Columbia Gas and Columbia Oil had procured the ownership of the aforesaid Detroit extension and additional common stock of Panhandle Eastern as above de-

scribed, Columbia Gas and Columbia Oil thereupon, in further violation of the express terms of said Decree, and through the use of said Detroit extension acquired from Panhandle Eastern as aforesaid, contrived to and did effect arrangements with Panhandle Eastern for the transportation of gas through the Detroit extension, so as to secure to themselves a further monopoly in the commerce of natural gas in Indiana, Ohio and Michigan, and to restrain trade and commerce by Panhandle Eastern therein, by causing Panhandle Eastern to enter into an agreement of March 17, 1936 with the Michigan Gas, the wholly-owned subsidiary of Columbia Gas, which provided in part as follows (Panhandle Eastern is referred to as "Eastern", and Michigan Gas Transmission Corporation as "Michigan") (italics ours):

[fol. 813] "4. *If at any time in the future,* while this Agreement remains in force, *Eastern has additional natural gas which is available* for ultimate distribution in the territory then reached by the pipe lines of Michigan, then (a) if Eastern has obtained a contract for the sale of such gas in such territory, Eastern shall have the right to require Michigan to accept and Michigan will accept such gas from Eastern at the Place of Delivery specified herein and will deliver such gas, provided, the Michigan shall be entitled to retain, out of payments made by the purchaser of such additional gas, not less than the amount which it would be entitled to retain if such additional gas were sold and accounted for on the same basis as the gas (other than gas delivered for ultimate resale to Special Industrial Customers) specified in Section 2 of this Article II; or (b) if Michigan has obtained a contract for the sale of such gas in such territory, Michigan shall notify Eastern thereof and within fifteen days thereafter Eastern may by notice in writing require Michigan to assign and Michigan will assign such contract to it and Eastern shall then have the same rights with respect to such contract so assigned as are specified in subdivision (a) of this Section 4 or if Eastern does not elect to have such contract assigned to it, then (1) Michigan shall have the right to purchase such gas from Eastern for such resale, at a price calculated to yield Eastern the price set forth in Section 2 of Article VII hereof, and (2) Eastern shall have the right at any time when it may have such gas available on a firm basis

(whether or not a supply of natural gas has been contracted for by Michigan elsewhere) to supply such gas to Michigan at a price (taking all factors into consideration) not less favorable to Michigan than the price at which such gas could otherwise be obtained by Michigan; provided, in any case, that the capacity of Michigan's pipe line and compressor station facilities shall be sufficient to carry such additional gas without interfering with its ability to supply the actual requirements of Detroit Company under the Detroit Contract and of any present firm commitments of Michigan (not exceeding 2,250,000,000 cubic feet per year) and of any prior firm commitments hereafter incurred of Michigan or Eastern which are supplied by gas furnished by Eastern."

XXI. The purpose, intent and effect of the contract, from which the foregoing provision is quoted, was to enable Columbia Gas to contract with the various municipalities and distribution systems located along said extension in Indiana, Ohio and Michigan for the sale by Columbia Gas [fol. 814] of Panhandle Eastern's gas to such communities at prices and on terms satisfactory to Columbia Gas and to enable Columbia Gas further to dominate and control the sale of natural gas in the States of Ohio, Indiana and Michigan and to restrain trade and commerce by Panhandle Eastern therein. Columbia Gas at the time of the making of said contract controlled the executive management of Panhandle Eastern and well knew that the gas reserves of Panhandle Eastern were more than adequate to supply the total capacity of Panhandle Eastern's pipe line and that there would be at all times "additional natural gas which is available for ultimate distribution in the territory then reached by the pipe lines of Michigan (Gas)", and intended thus to contrive and did contrive that Columbia Gas should have control of any gas of Panhandle Eastern that was available for ultimate distribution in the territory that might be then reached by the pipe lines of Michigan Gas and to exact for itself an unreasonable and unfair price for such gas, in order that the price structure of the Columbia System in Indiana and Michigan and more particularly in Ohio, should not be affected. The defendants herein (except Hillman) have agreed between themselves and with the management of Panhandle Eastern that the contracts between Panhandle Eastern and Michigan Gas should be

construed so as not to permit Panhandle Eastern to sell gas for industrial use directly in the territory reached by the line of Michigan Gas or to require the line of Michigan Gas to carry the same, with the result that Panhandle [fol. 815] Eastern has been prevented from offering gas for industrial use in Indiana, Ohio and Michigan, particularly in the Toledo area, although it could have sold great quantities of the same.

XXII. On or about January 15, 1940 and at other times heretofore, Mokan as the owner and holder of 339,275 shares of the common stock of Panhandle Eastern made demand upon Panhandle Eastern and the officers and directors thereof including Gano Dunn above mentioned that this or a like application be made by Panhandle Eastern for relief to which Panhandle Eastern is entitled under Sections IV and V of said Decree, but Panhandle Eastern, its officers and directors, have neglected and refused and still neglect and refuse to take any action whatsoever. The reason Panhandle Eastern, its officers and directors have not taken action is that said Board is controlled by said Gano Dunn and five nominees of Columbia Oil who are acting in concert with Columbia Gas and Columbia Oil to restrain trade in natural gas as aforesaid to the great loss and damage of Panhandle Eastern. At the annual meeting of stockholders of Panhandle Eastern held on March 11, 1939, resolutions were proposed that Panhandle Eastern take the action which Mokan had demanded on January 15, 1940, including filing an application in its own name as Mokan is doing on its behalf by this application. Said resolutions, after being seconded, received the affirmative vote of persons and proxies totalling 373,600 shares of the common stock of [fol. 816] Panhandle Eastern Pipe Line Company. All stockholders and proxies present at such meeting voted for said resolutions, except the management proxy, who represented 5,380 shares, and Harold B. Howard, proxy for 109 shares, neither of whom voted on the resolutions, and Gano Dunn, the Trustee for Columbia Oil under the terms and conditions of the Consent Decree entered herein on January 29, 1936, who voted against the resolutions; whereupon, the Chairman declared that the same had been defeated. The said Gano Dunn so voted pursuant to general instructions from Columbia Oil & Gasoline Corporation.

Wherefore, it is prayed that the relief to which Panhandle Eastern is entitled under Sections IV and V of the Decree filed herein January 29, 1936 be granted viz

(1) That leave be granted to file this application on behalf of Panhandle Eastern in accordance with the terms of said Section V and to become a party hereto for the limited purpose of enforcing the rights conferred by Section IV of said Decree.

(2) That a trustee be appointed to hold all the stock of Michigan Gas and all interest of Columbia Gas in said Company, and that Columbia Gas be ordered to turn over such stock and interests to such trustee to be held by him for the benefit of the Panhandle Eastern, subject only to repayment to Columbia Gas of sums actually advanced by it for the purpose of construction of the aforesaid pipe line, less any dividends and all other moneys received directly or indirectly by Columbia Gas from profits made by said [fol. 817] Michigan Gas and provided any balance due to Columbia Gas shall be a first charge on the assets and earnings of the trust estate.

(3) That the Trustee herein, Gano Dunn, be directed forthwith to deliver up and surrender to Panhandle Eastern 80,000 shares of its capital stock received as mentioned in paragraph XIX hereunder, and that the defendants Columbia Oil and Columbia Gas be directed to receive in lieu thereof a security which does not in any way directly or indirectly, presently or potentially, confer on Columbia Gas any voting rights, control or participation in the management of, Panhandle Eastern.

(4) That said Trustee, Gano Dunn, be directed to vote the common stock and the 100,000 shares of Class A preferred stock and the 10,000 shares of Class B preferred stock of Panhandle Eastern so that the provisions of such preferred stock may be suitably amended to eliminate any and all right of the holders thereof to vote on any matter whatever, including the election of directors.

(5) That United States of America, Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, George H. Howard, Phillip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay, John H. Hillman, Jr. and

Panhandle Eastern be cited to appear before the court, upon a day to be named by the court, there to show cause why an order should not be made granting the relief prayed for herein.

(6) For such other and further relief as to the court may [fol. 818] seem appropriate under the provisions of said Section IV of said Decree.

And it will be forever prayed, &c..

Missouri-Kansas Pipe Line Company, by (Sgd.) W. C. Tringham, Treasurer. (Corporate Seal.)

Attest: (Sgd.) W. C. Tringham., Secretary.

On its own behalf as a stockholder and on behalf of all other stockholders similarly situated of Panhandle Eastern Pipe Line Company, making this application in behalf of Panhandle Eastern Pipe Line Company for relief to which Panhandle Eastern Pipe Line Company is entitled under Sections IV and V of the Decree filed herein January 29, 1936.

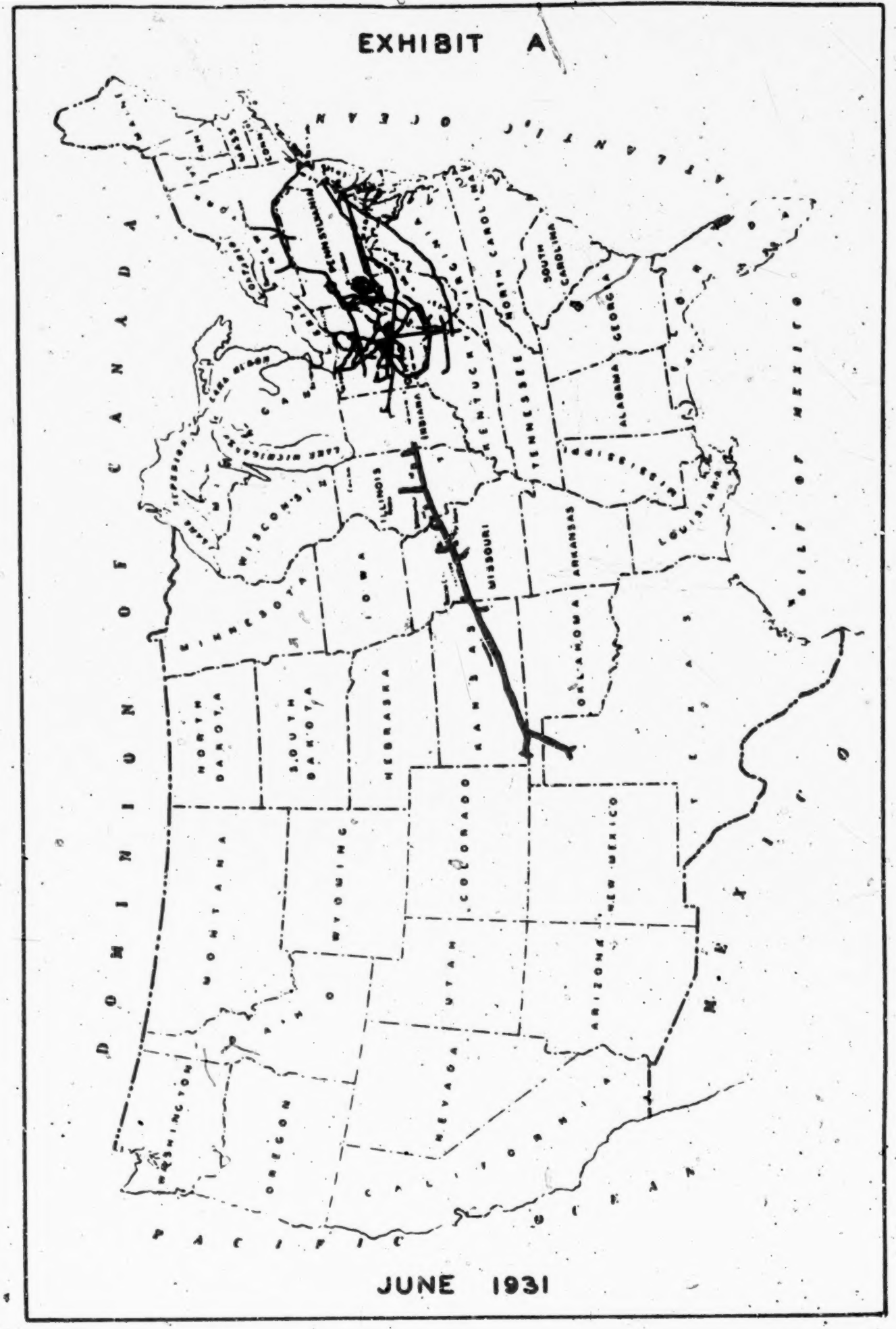
(Sgd.) Arthur G. Logan, (Sgd.) Logan and Duffy, Attorneys for Missouri-Kansas Pipe Line Company.

Russell Hardy, 729 Fifteenth Street, Washington, D. C., Robert J. Bulkley, Bulkley Building, Cleveland, Ohio, Arthur G. Logan, 303 Delaware Trust Building, Wilmington, Delaware, Of Counsel.

(Here follow 4 photolithographs, side folios 819-822)

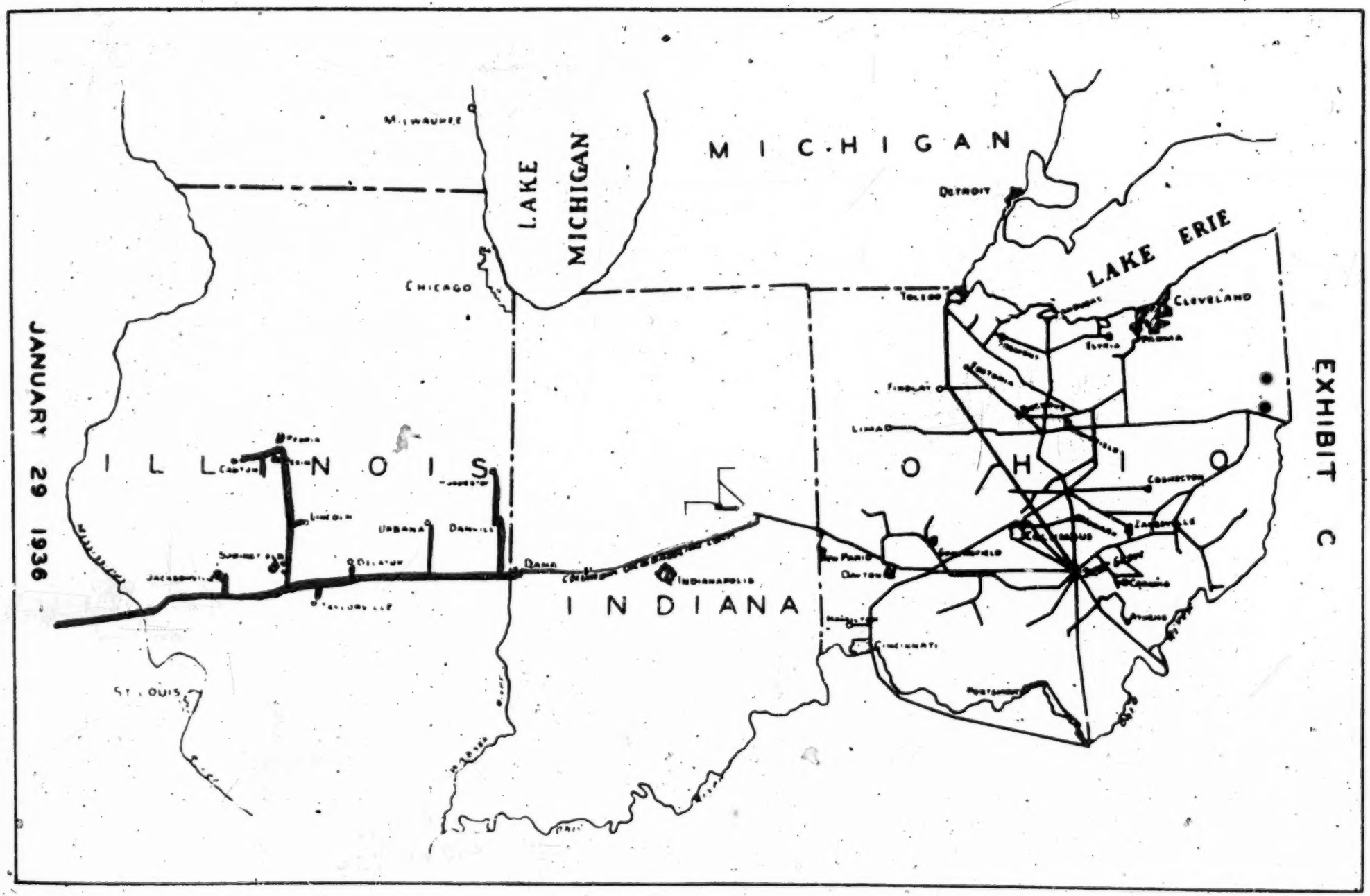
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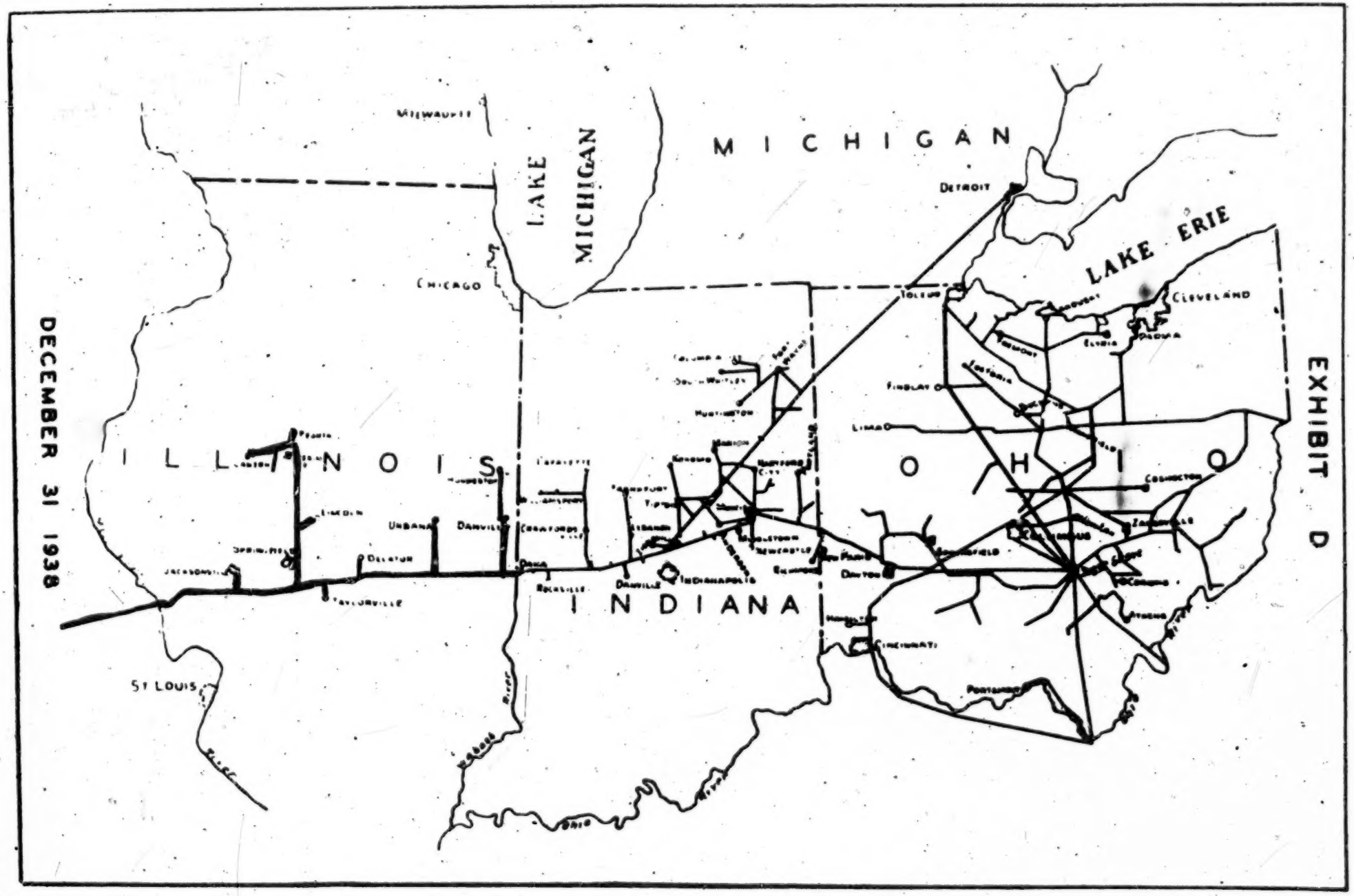
EXHIBIT A



JUNE 1931

ENLARGEMENT OF EXHIBIT A
JUNE 1931
EXHIBIT B
MILWAUKEE
LAKE MICHIGAN
MICHIGAN
CHICAGO
LAKE ERIE
CLEVELAND
ILLINOIS
PEORIA
LINCOLN
URBANA
DANVILLE
DECATUR
DANA
JACKSONVILLE
SPRINGFIELD
TAYLORVILLE
ST LOUIS
INDIANAPOLIS
INDIANA
OHIO
COLUMBUS
DAYTON
ZANESVILLE
PORTSMOUTH
OHIO RIVER
MISSISSIPPI RIVER


MILWAUKEE
LAKE MICHIGAN
MICHIGAN
DETROIT
LAKE ERIE
CHICAGO
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TOLEDO
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INDIANA
INDIANAPOLIS
DAYTON
CINCINNATI
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JANUARY 29 1936
EXHIBIT C


MILWAUKEE
LAKE MICHIGAN
MICHIGAN
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CLEVELAND
TOLEDO
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ST LOUIS
DECEMBER 31 1938
EXHIBIT D

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[fol. 823] *Duly sworn to by W. C. Tringham. Jurat omitted in printing.*

[fol. 824] In United States District Court

Order Setting Application of Missouri-Kansas Pipe Line Company for Hearing—Filed April 16, 1940

And now, to-wit this 16th day of April, A. D. 1940, upon reading and considering the application of Missouri-Kansas Pipe Line Company for leave to file its application as a derivative stockholder's application in behalf of Panhandle Eastern Pipe Line Company pursuant to the provisions of Section V of the decree entered herein on the 29th day of January, A. D. 1936, for the limited purpose of enforcing the rights conferred upon Panhandle Eastern Pipe Line Company by Section IV thereof, it is, upon motion of Arthur G. Logan, Esq., attorney for said Missouri-Kansas Pipe Line Company,

Ordered by the Court that said application be and hereby is set down for hearing before this court at the United States Court Room in the City of Wilmington in said district on the 23d day of April, A. D. 1940, at ten o'clock in the forenoon, at which time and place any party in interest may appear and show cause, if any they have, why said application should not be granted.

It is further ordered by the Court that notice of the time and place of said hearing be forthwith given to the other parties to this cause, and to that end that a copy of said application and of this order be forthwith served upon said other parties or their attorneys of record.

(Sgd.) John P. Nields, J.

[fol. 825] In United States District Court

Order Denying Application of Missouri-Kansas Pipe Line Company to Intervene—Filed April 23, 1940

And now, to-wit, this 23d day of April, A. D. 1940, the above entitled cause having come on to be heard upon the application of Missouri-Kansas Pipe Line Company in behalf of Panhandle Eastern Pipe Line Company for certain relief under the decree of this Court of January 29,

1936, and the said application having been fully argued by counsel, and upon consideration thereof by the Court it is

Ordered by the Court that the said application be and it is hereby denied.

(sgd.) John P. Nields, J.

[fol. 826] In United States District Court

Petition for Appeal—Filed June 14, 1940

Missouri-Kansas Pipe Line Company, petitioner, considering itself aggrieved by the decree made and entered on the 23rd day of April, 1940, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States, and in support of this, its petition for appeal, shows unto the Court:

The action in this Court was brought by the United States under the act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation and certain individuals to enjoin them from continuing to engage in a conspiracy in restraint of trade and commerce among the states in natural gas, from exercising any dominion or control over Panhandle Eastern Pipe Line Company, and from further restraining or interfering in any manner with the free and independent action of Panhandle Eastern Pipe Line Company in the production, transportation, or sale and delivery of natural gas. Said action also sought to dissolve the restraint and monopoly by causing Columbia Oil and Gasoline Corporation to divest itself [fol. 827] of all stock and bonds of Panhandle Eastern Pipe Line Company. The action was begun by the United States filing its petition on March 26, 1935. On October 30, 1935, the United States filed an amended and supplemental petition. Said amended and supplemental petition sets forth the following facts:

(a) The defendant Columbia Gas & Electric Corporation (hereinafter referred to as "Columbia Gas") was and is extensively engaged in trade and commerce among the

States in natural gas through subsidiaries and affiliates, and as stated in the petition, "Its greatest concentration of operations is in the State of Ohio, in a large portion of which State it has for many years past enjoyed a virtual monopoly in the sales and distribution of natural mixed and artificial gas." (Par. 15.)

(b) The defendant Columbia Oil & Gas Corporation (hereinafter referred to as "Columbia Oil") was organized by Columbia Gas to hold the oil, gasoline, and gas-producing properties of the so-called Columbia System. That is to say, the subsidiaries and affiliates of Columbia Gas above mentioned. (Par. 14.)

(c) Missouri-Kansas Pipe Line Company, the petitioner herein, (hereinafter referred to as "Mokan") was organized for the purpose of producing, transporting, distributing, and selling natural gas. It caused the organization of Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle Eastern") and became the owner of the entire capital stock of said corporation. Panhandle Eastern was organized for the purpose of building and [fol. 828] operating a natural gas pipe line from the gas-producing territories of the Texas Panhandle and Kansas, through the States of Oklahoma, Kansas, Missouri, Illinois, and Indiana, up to the City of Indianapolis with extensions to the Cities of Detroit, Michigan and Dayton and Cincinnati, Ohio. (Par. 16.)

(d) The defendants engaged in a combination and a conspiracy in June, 1930, to restrain and monopolize trade and commerce among the States in natural gas, particularly in the States of Indiana, Michigan and Ohio in violation of the anti-trust laws. The purpose of the defendants was to prevent Panhandle Eastern from making available, either directly or indirectly, its very large supplies of natural gas in such manner as to compete with the Columbia System or endanger its monopolization of the distribution and sale of natural gas in the States of Michigan and Ohio, and, among other things, to bring Mokan and Panhandle Eastern to such a financial condition that the defendants would be enabled to acquire the complete domination and ownership of Panhandle Eastern's physical assets and properties. (Par. 17.)

(e) The defendants Columbia Oil and Columbia Gas were about to and did acquire 50 per cent of the common stock

of Panhandle Eastern and all of its outstanding debt. (Pars. 18 and 22.)

(f) Said defendants also obtained control of the Board of Directors and management of Panhandle Eastern. (Par. 23.)

(g) Mokan retained 50 per cent of the common stock of Panhandle Eastern, but in order to maintain said 50 per [fol. 829] cent interest, was required to advance approximately $5,000,000. In order to raise said amount, Mokan pledged its 50 per cent of the common stock of Panhandle Eastern. (Par. 24.)

(h) Thereafter, the defendants, through their control over Panhandle Eastern, prevented it from selling natural gas, and thus it had no earnings sufficient to make interest or dividend payments to Mokan which would have enabled Mokan to pay the interest on its debt. (Pars. 26 to 29.)

(i) Mokan was thereupon forced into receivership. (Par. 27.)

(j) Columbia Oil thereafter acquired control of substantially all of Mokan's 50 per cent interest in the common stock of Panhandle Eastern, thus giving the Columbia Companies control of Panhandle Eastern free from Mokan's minority interest. (Pars. 29 to 32.)

(k) Defendants were, at the time the petition was filed, engaged in other acts and transactions which would have given them 100 per cent ownership of the common stock of Panhandle Eastern. (Par. 31.)

On January 29, 1936, a stipulation was entered into between the parties to said action and a consent decree was entered thereon the same day.

The stipulation provided, inter alia:

"The defendant Columbia Oil agrees to make, within 48 hours of the entry of the attached decree, a bona fide offer in writing to the Receivers of Missouri-Kansas Pipe Line Company, appointed by the Delaware Chancery Court, providing among other things for the settlement of the claims of the Receivers asserted against the defendants herein and the acquisition by the Receivers of a direct interest in the stock of Panhandle Eastern Pipe Line Company, to the [fol. 830] extent of one-half of the initial amount of com-

mon stock of Panhandle Eastern Pipe Line Company to be outstanding after a recapitalization thereof, * * *"

Pursuant to the provisions in the stipulation, an offer of settlement was made to the Receivers of Missouri-Kansas Pipe Line Company whereby they reacquired a direct interest in the stock of Panhandle Eastern Pipe Line Company. At present, the interest of Missouri-Kansas is approximately 42% of the common stock in said Company.

The consent decree provided for the appointment of a trustee to hold the Panhandle Eastern stock of Columbia Oil and to vote it for directors recommended by Columbia Oil.

The consent decree provided further:

"IV

That the defendants be and they are hereby perpetually enjoined from restraining or interfering in any manner in the freedom of Panhandle Eastern to contract or to finance or arrange the financing of all contracts, extensions (including the proposed new line to Detroit, whether or not built and owned by it), repairs, maintenance, service, or improvements necessary in its business through or with any firm, person, or corporation with whom it may choose to deal (and to that end any such financial or contractual arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter);

That if such contracts be made with or financial assistance be secured from Columbia Gas, such contracts may be made or financial assistance furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment; and in the event that Columbia [fol. 831] Gas shall, with respect to any contract or any contractual rights of any kind whatsoever or any property held as security or used in connection with any contract, in any

way prevent the free transportation, sale, and distribution of gas by Panhandle Eastern, then upon application to this Court or any court of competent jurisdiction Panhandle Eastern shall have the right (1) to the immediate appointment of a trustee to hold such contract rights or property subject to the purposes and provisions of this decree; (2) to immediate specific performance of any and all contracts with Columbia Gas; and (3) to immediate injunction, both temporary and final, as well as any other appropriate remedy at law or in equity, including any remedy hereunder.

V

That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

On December 21, 1938, the United States moved for leave to serve a supplemental complaint. The motion was granted and a supplemental complaint filed January 12, 1939. In and by this supplemental complaint, the United States pointed out that there was, "Necessity for further action by this Court to achieve the purposes of the decree" (i. e. Consent Decree). This supplemental complaint then alleged:

"(a) In the period of almost three years which has elapsed since the entry of the decree of January 29, 1936, no steps of any kind have been taken toward the effective termination of all control by Columbia Gas of Panhandle Eastern, * * *. The Course of events since the entry of said decree on January 29, 1936, has made it increasingly clear (1) that the only effective way to restore and maintain a position of free and independent action for Panhandle Eastern is to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require all stock of Panhandle Eastern, as contemplated by the last paragraph of Section III of said decree, and (2) that to accomplish the purpose of

said decree, it is necessary to supplement said decree by a further order requiring the formulation and submission to [fol. 832] this Court for approval of a suitable plan or plans to accomplish such divestiture."

Said supplemental complaint prayed, among other things, for a divestiture either by Columbia Gas of its Columbia Oil holdings or by Columbia Oil of its Panhandle Eastern holdings.

Thereafter, on May 15, 1939, the United States moved for leave to withdraw said supplemental complaint of January 21, 1938, to vacate the consent decree of January 29, 1936, and to file an amended and supplemental complaint. Annexed to said motion is a copy of the proposed amended and supplemental bill of complaint. In and by this amended and supplemental complaint, the Government alleges that the Columbia Companies have continued at all times since the entry of the consent decree to violate the anti-trust laws, among other things, by continuing to exercise dominion and control over Panhandle Eastern notwithstanding the terms of said decree. Prayers "F" and "G" of said complaint specifically are that:

"F. The defendant Columbia Oil shall proceed forthwith to sell all interest which it may now have or may hereafter acquire in any securities of Panhandle Eastern.

G. The defendant Columbia Gas shall proceed forthwith to sell all interest which it may now have or may hereafter acquire in any securities of Michigan Gas Transmission Company."

No proceedings have been had by the Court on said motion.

Instead, thereafter, on June 20, 1939, the defendants proposed that the consent decree be modified, and offered a plan purporting to end the restraint and monopoly.

Three weeks after the United States filed its supplemental complaint on December 21, 1939, as aforesaid, Mokan filed a motion for leave to intervene in the cause. This [fol. 833] motion was denied. On June 5, 1939, after the United States had filed its motion to file ar amended and supplemental complaint, Mokan again sought leave to intervene. This was denied. Mokan took appeals from the orders denying it leave to intervene to the United States Cir-

cuit Court of Appeals for the Third Circuit, which appeals were dismissed (110 F. (2d) 15) on the ground that under the provisions of the so-called "Expediting Act", 15 U. S. C. A. Sec. 29 as interpreted by the Supreme Court of the United States in the case of United States vs. California Co-operative Canneries, 279 U. S. 553, 73 L. Ed. 838, appeals to intervene in a cause such as the instant one, wherein the United States is complainant, could only be taken to the Supreme Court of the United States and that there was no jurisdiction in the Circuit Court to entertain the appeals. A petition for writs of certiorari to review said decision of the Circuit Court of Appeals was denied on the 22nd day of April, 1940.

Mokan, as the owner and holder of 339,275 shares of the common stock of Panhandle Eastern, made demand upon Panhandle Eastern and the officers and directors thereof, including the Trustee appointed by the Consent decree, that an application be made by Panhandle Eastern for the relief to which it is entitled under Section IV and V of the consent decree. (i. e. under said above quoted provision that, etc.) But Panhandle Eastern, its officers and directors, neglected and refused to comply with said demand and take said action against the defendants, due to the fact that its board of directors is controlled by the defendants [fol. 834] and nominees of Columbia Oil who are acting in concert with Columbia Gas and Columbia Oil to restrain trade in natural gas. Columbia Oil is the beneficial owner of 404,326 shares of the common stock of Panhandle Eastern, which constitutes in excess of 50% of the total issued and outstanding, and is the beneficial owner of all the issued and outstanding preferred stock of Panhandle Eastern. The stock beneficially owned by Columbia Oil has voting rights sufficient to elect two more than a majority of directors. This stock stands in the name of Gano Dunn as Trustee under the consent decree. He has acted for Columbia Oil in placing their nominees on the Board of Panhandle Eastern and has taken directions from it at all times as to the manner in which the affairs of Panhandle Eastern should be conducted. The application of Mokan states, inter alia:

"The reason Panhandle Eastern, its officers and directors have not taken action is that said Board is controlled by said Gano Dunn and five nominees of Columbia Oil who

are acting in concert with Columbia Gas and Columbia Oil to restrain trade in natural gas as aforesaid to the great loss and damage of Panhandle Eastern."

At the annual meeting of stockholders of Panhandle Eastern held on March 11, 1940, resolutions were proposed that Panhandle Eastern take the action which Mokan demanded that it take. The Chairman of the meeting declared the motion defeated, however, when Gano Dunn, the Trustee, voted against it. He so voted pursuant to general instructions from Columbia Oil.

Mokan thereupon made application herein in behalf of Panhandle Eastern for the relief to which said company is [fol. 835] entitled under Sections IV and V of the consent decree which are hereinabove set forth. An order was entered on April 23, 1940 denying said application.

As Panhandle Eastern has neglected and refused to make an application in the cause to become a party for the purpose of enforcing the rights conferred upon it by Section IV of the consent decree, which neglect and refusal is occasioned through the domination and control which the Columbia Companies continue to exert over Panhandle Eastern, its officers and directors, and as the rights conferred by Section IV are valuable rights under the decree as aforesaid against the Columbia Companies and those acting with them to prevent Panhandle Eastern Pipe Line Company from engaging freely and independently in trade and commerce among the States in natural gas, the decree of the United States District Court for the District of Delaware, denying Mokan leave to intervene and assert these valuable rights on behalf of Panhandle Eastern, constitutes, unless reversed, an effectual deprivation of those rights, including the right to a full and complete enjoyment of the decree.

Petitioner files herein its assignment of errors which specifies the reasons for which it considers itself aggrieved by the decree and order entered herein on April 23, 1940.

Petitioner also files herewith its Jurisdiction Statement.

Wherefore, Petitioner prays that this appeal may be allowed and that a citation issue as provided by law directed to the respondents above named commanding them and each of them to be and appear before the Supreme Court of the [fol. 836] United States to do and receive what may appertain to equity and justice in the premises and that the decree

and order denying the application of Missouri-Kansas Pipe Line Company be reversed.

Dated June 14th, 1940.

Missouri-Kansas Pipe Line Company, by (Sgd.) A. Faison Dixon, Vice President and (Sgd.) Arthur G. Logan, by (Sgd.) Logan and Duffy, 303 Delaware Trust Building, Wilmington, Delaware, Its Attorneys.

Arthur G. Logan, Delaware Trust Building, Wilmington, Delaware, Robert J. Bulkley, Bulkley Building, Cleveland, Ohio, Russell Hardy, 729 Fifteenth Street, N. W., Washington, D. C.

[fol. 837] *Duly sworn to by A. Faison Dixon. Jurat omitted in printing.*

[fol. 838] IN UNITED STATES DISTRICT COURT

MISSOURI-KANSAS PIPE LINE COMPANY'S ASSIGNMENT OF ERRORS—Filed June 14, 1940

Now Comes Missouri-Kansas Pipe Line Company, petitioner in the above-entitled cause, appellant, by its attorneys, and files the following assignment of errors upon which it will rely on its appeal herein to the Supreme Court of the United States:

1. The Court erred in denying the application of Missouri-Kansas Pipe Line Company in behalf of Panhandle Eastern Pipe Line Company for relief under the consent decree of the Court of January 29, 1936.

2. The Court erred in refusing to allow Missouri-Kansas Pipe Line Company to make application in its representative capacity as a minority stockholder of Panhandle Eastern Pipe Line Company to enforce its secondary right to secure for Panhandle Eastern Pipe Line Company the relief to which it is entitled under the provisions of paragraphs IV and V of the consent decree entered by the Court on January 29, 1936.

3. The Court erred in refusing to grant leave to Missouri-Kansas Pipe Line Company to file its application on behalf

of Panhandle Eastern in accordance with the terms of paragraph V of the consent decree and to become a party in the proceedings for the limited purpose of enforcing the rights [fols. 839-843] conferred by paragraph IV of the said consent decree of January 29, 1936.

4. The Court erred in refusing to allow Missouri-Kansas Pipe Line Company to enforce on behalf of Panhandle Eastern Pipe Line Company the rights shown in its application to which Panhandle Eastern Pipe Line Company is entitled under the provisions of paragraphs IV and V of the consent decree entered by the Court on January 29, 1936 in the cause.

Wherefore, the petitioner-appellant prays that the decree of the United States District Court for the District of Delaware entered on April 23, 1940, denying the application of Missouri-Kansas Pipe Line Company, be reversed by the Supreme Court of the United States, and that petitioner-appellant be granted the relief prayed for by it in its application.

(Sgd.) Arthur G. Logan, (Sgd.) Logan and Duffy, 303 Delaware Trust Building, Wilmington, Delaware, Attorneys for Missouri-Kansas Pipe Line Company, Petitioner-Appellant.

Robert J. Bulkley, Bulkley Building, Cleveland, Ohio, Russell Hardy, 729 Fifteenth St., Washington, D. C., Arthur G. Logan, Delaware Trust Bldg., Wilmington, Delaware, Of Counsel.

[fols. 844-846] In United States District Court

Order Allowing Appeal by Missouri-Kansas Pipe Line Company—Filed June 14, 1940

And now, to-wit, this 14th day of June, A. D. 1940, the petition for appeal filed by Missouri-Kansas Pipe Line Company, together with the assignments of error, prayer for reversal and statement as to jurisdiction, having been presented to, read and maturely considered by the Court, upon motion of Arthur G. Logan, Esquire, it is, pursuant to the statutes and the Rules of the Supreme Court of the United States in such case made and provided,

Ordered by the Court that an appeal as prayed for in

said petition for appeal of Missouri-Kansas Pipe Line Company be and the same hereby is allowed to the Supreme Court of the United States from the District Court of the United States for the District of Delaware in this cause as provided by law; and

It is further Ordered by the Court that security for costs on appeal be and the same hereby is fixed in the sum of Two hundred fifty dollars ($250.00); and

It is Further Ordered by the Court that the Clerk of the District Court of the United States for the District of Delaware shall prepare and certify a transcript of the record, proceedings and decree and transmit the same to the Supreme Court of the United States and that he shall have the same in said Court on or before forty (40) days from this date.

(Sgd.) John P. Nields, J.

[fols. 847-848] Citation and service on appeal of Missouri-Kansas Pipe Line Company, Filed June 18, 1940, omitted in printing.

[fol. 849] IN UNITED STATES DISTRICT COURT

PRAECIPE OF MISSOURI-KANSAS PIPE LINE COMPANY FOR TRANSCRIPT OF RECORD ON APPEAL—Filed June 18, 1940

To the Clerk of the United States District Court for the District of Delaware:

Dear Sir:

You are hereby requested to prepare a transcript of record to be transmitted to the Supreme Court of the United States pursuant to the order allowing an appeal as prayed for by Missouri-Kansas Pipe Line Company, which order was heretofore filed on June 14, 1940, in this cause, and to include therein the following papers:

1. Docket entries.

2. Amended and supplemental petition of the plaintiff filed October 30, 1935.

3. Answer of defendants Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R.

Weymouth, Thomas B. Gregory, and Edward Reynolds, Jr., filed January 29, 1936.

4. Answer of defendants Columbia Oil & Gasoline Corporation and Charles A. Munroe, filed January 29, 1936.

5. Answer of defendant John H. Hillman, Jr., filed January 29, 1936.

6. Answer of defendant Burt R. Bay, filed January 29, 1936.

[fol. 850] 7. Stipulation and Decree that defendants be enjoined and appointing Gano Dunn as trustee, etc., filed January 29, 1936.

8. Amended and supplemental petition of plaintiff filed January 12, 1939.

9. Motion and attached petition of Missouri-Kansas Pipe Line Company for leave to intervene and order filed February 6, 1939.

10. Answer of John H. Hillman, Jr., defendant, filed February 24, 1939.

11. Opinion of Court filed March 29, 1939.

12. Order denying intervention filed March 30, 1939.

13. Answer of Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, and Edward Reynolds, Jr., filed May 15, 1939.

14. Answer of defendants Columbia Oil & Gasoline Corporation and Charles A. Munroe, filed May 15, 1939.

15. Motion of plaintiff for leave to withdraw supplemental complaint, filed May 15, 1939.

16. Motion of plaintiff to vacate decree, etc., filed May 15, 1939.

17. Motion and Plan of defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, filed June 20, 1939.

18. Motion and annexed petition of Missouri-Kansas Pipe Line Company for leave to intervene and affidavit of service filed July 5, 1939.

19. Order denying intervention filed July 10, 1939.

[fol. 851] 20. Order of reference of Plan to special master dated July 10, 1939.

21. Opinion of William Prickett, Esq., Special Master, filed July 29, 1939.

22. Summary of plan, findings of fact, conclusions of law and recommendations of Special Master and testimony before him, filed July 29, 1939.

23. Report of William Prickett, Special Master, with papers therein mentioned, filed August 5, 1939.

24. Objections by Missouri-Kansas Pipe Line Company to report of Special Master, filed August 8, 1939.

25. Objections of City of Detroit to report of Special Master, filed August 12, 1939.

26. Application of Panhandle Eastern Pipe Line Company to be made a party, etc., and order setting same down for hearing. Filed March 23, 1940.

27. Motion of Columbia Gas & Electric Corporation to dismiss application of Panhandle Eastern Pipe Line Company with affidavits of Joe D. Creveling, Gano Dunn and D. M. Wilson, filed March 29, 1940.

28. Motion of Columbia Oil & Gasoline Corporation to dismiss application of Panhandle Eastern Pipe Line Company with affidavits of Joe D. Creveling, Gano Dunn and Don M. Wilson, filed March 29, 1940. (Omit exhibits which are on motion of Columbia Gas & Electric Corporation #27.)

[fol. 852] 29. Opinion of Court, filed April 6, 1940.

30. Application of Missouri-Kansas Pipe Line Company to become a party, etc., and order setting same down for hearing. Filed April 16, 1940.

31. Order denying application of Missouri-Kansas Pipe Line Company for leave to become a party, etc., filed April 23, 1940.

32. Petition for Appeal, filed June 14, 1940.

33. Assignments of error, filed June 14, 1940.

34. Jurisdiction Statement, filed June 14, 1940.

35. Motion required by paragraph 2 of Rule 12 of the Rules of the Supreme Court with proof of service of it and papers required by said paragraph 2, of the Rules of the Supreme Court of the United States.

36. Copy of citation with proof of service.

37. Clerk's Certificate.

38. This praecipe with proof of service.

(Sgd.) Arthur G. Logan. Logan & Duffy, 303 Delaware Trust Bldg., Wilmington, Delaware, Attorneys for Missouri-Kansas Pipe Line Company.

Receipt is acknowledged of copy of the within and foregoing praecipe.

(Sgd.) Stewart Lynch, Attorney for the United States of America. C. A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., and Burt R. Bay. Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and [fol. 853] Charles A. Munroe. C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 854] IN UNITED STATES DISTRICT COURT

AMENDED PRAECIPE OF MISSOURI-KANSAS PIPE LINE COMPANY FOR TRANSCRIPT OF RECORD ON APPEAL—Filed July 1, 1940

To the Clerk of the United States District Court for the District of Delaware:

DEAR SIR:

You are hereby requested to amend the praecipe heretofore filed by Missouri-Kansas Pipe Line Company in the above-captioned matter in the following particulars:

1. Strike out paragraph 22 thereof and substitute in lieu thereof the following:

"22. Summary of Plan, Findings of Fact, Conclusions of Law and Recommendations of Special Master, filed July 29, 1939. Do not include testimony before Special Master."

2. Strike out paragraph 23 and substitute in lieu thereof the following:

"23. The Report of William Prickett, Special Master, filed August 5, 1939, excluding documents returned therewith."

3. Add the following:

"39. Order allowing appeal entered June 14, 1940."

4. Change the word "motion" in item 35 to "notice".

5. Include this amended praecipe.

(Sgd.) Arthur G. Logan, Logan and Duffy, 400 Continental American Building, Wilmington, Delaware, Attorneys for Missouri-Kansas Pipe Line Company.

[fol. 855] Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) Stewart Lynch, Attorney for the United States of America. (Sgd.) C. A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr. and Burt R. Bay. (Sgd.) Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe. (Sgd.) C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 856] In United States District Court

Amended Praecipe of Missouri-Kansas Pipe Line Company for Transcript of Record on Appeal—Filed July 6, 1940

To the Clerk of the United States District Court for the District of Delaware:

Dear Sir:

You are hereby requested to further amend the praecipe heretofore filed by Missouri-Kansas Pipe Line Company in the above-captioned matter in the following particulars:

1. Strike out paragraph 23 as amended and substitute in lieu thereof the following:

"23. The Report of William Prickett, Special Master, filed August 5, 1939, excluding documents returned therewith except item #7."

2. Include this amended praecipe.

(Sgd.) Arthur G. Logan, Logan and Duffy, 400 Continental American Bldg., Wilmington, Delaware, Attorneys for Missouri-Kansas Pipe Line Company.

Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) Stewart Lynch, Attorney for the United States of America. (Sgd.) C. A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., and Burt R. Bay. (Sgd.) Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe. (Sgd.) C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 857] IN UNITED STATES DISTRICT COURT

COUNTER-PRAECIPE OF COLUMBIA GAS & ELECTRIC CORPORATION ON APPEAL BY MISSOURI-KANSAS PIPE LINE COMPANY—Filed June 28, 1940

To the Clerk of the United States District Court for the District of Delaware:

DEAR SIR:

You are hereby requested to include in the Transcript of Record on Appeal by Missouri-Kansas Pipe Line Company from the order entered in the above cause on April 23, 1940, of which said appeal notice was filed on June 14, 1940, in addition to the matters set forth in the praecipe filed by said Missouri-Kansas Pipe Line Company on or about June 14, 1940, the following papers:

1. Objections of Columbia Gas & Electric Corporation to report of William Prickett, Esq., Special Master, filed in August, 1939.

2. Objections of Columbia Oil & Gasoline Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939.

3. Plaintiff's exceptions to the report of William Prickett, Esq., Special Master, filed in August, 1939.

4. Opinion of the United States Circuit Court of Appeals for the Third Circuit, filed December 15, 1939, on two appeals of Missouri-Kansas Pipe Line Company from two orders of the District Court denying its application for leave to intervene, and reported in 108 F. (2d) 614.

[fol. 858] 5. First paragraph under heading "Introduction" in the "Brief on Behalf of Columbia Oil & Gasoline Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Plan for the Modification of the Consent Decree Entered in This Action", filed on or about May 22, 1940.

6. First two paragraphs under heading "Nature of This Motion" in the "Brief on Behalf of Columbia Gas & Electric Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Certain Plan", filed on or about May 22, 1940.

7. Report of Gano Dunn, Trustee, for the period of January 29, 1936, to July 29, 1936, dated August 11, 1936, with the following exhibits or portions thereof:

Exhibit C—Financing agreement, dated January 31, 1936, between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation.

Exhibits D and E—Letters of Gano Dunn, dated February 28, 1936, to Panhandle Eastern Pipe Line Company and to Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation approving the financing agreement of January 31, 1936.

Exhibit F—Gas contract, dated March 17, 1936, between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, together with Exhibit A annexed thereto being gas contract, dated August 31, 1935,

between Panhandle Eastern Pipe Line Company and Detroit City Gas Company.

Exhibit G—Letter, dated March 17, 1936, of Gano Dunn to Panhandle Eastern Pipe Line Company approving contract between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, dated March 17, 1936.

[fol. 859] Exhibit K—Three party agreement, dated June 1, 1936, between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and the Receivers of Missouri-Kansas Pipe Line Company, with Exhibits C and F, and all exhibits to Exhibit F except Exhibits D and E.

The following portions of Exhibit L—

(a) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on March 24, 1936, beginning with the heading "Declaration of Stock Dividend" down to, but not including, heading "Construction Program and Authorization".

(b) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on April 7, 1936, consisting of paragraph entitled "Subscription Rights".

(c) Extract from minutes of Special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 5, 1936, beginning with the heading "Report of Approval of Offer made by Columbia Oil & Gasoline Corporation to Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Salaries and Compensation".

(d) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 19, 1936, beginning with the heading "Settlement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and the Receivers of Missouri-Kansas Pipe Line Company".

8. Order of John P. Nields, District Judge, entered in this cause on November 1, 1939, upon petition of Missouri-
[fol. 860] Kansas Pipe Line Company ordering the postponement of the hearing on the exceptions to the report of William Prickett, Esq., Special Master, with respect to the Plan, and the petition on which said order is based.

(Sgd.) C. A. Southerland, Solicitor for Columbia Gas & Electric Corporation.

June 27, 1940.

[fol. 861] IN UNITED STATES DISTRICT COURT

COUNTER PRAECIPE OF COLUMBIA OIL & GASOLINE CORPORATION ON APPEAL OF MISSOURI-KANSAS PIPE LINE COMPANY —Filed June 28, 1940

To the Clerk of the United States District Court for the District of Delaware:

DEAR SIR:

You are hereby requested to include in the Transcript of Record on Appeal by Missouri-Kansas Pipe Line Company from the order entered in the above cause on April 23, 1940, of which said appeal notice was filed on June 14, 1940, in addition to the matters set forth in the praecipe filed by the said Missouri-Kansas Pipe Line Company on or about June 14, 1940, the following papers:

1. Objections of Columbia Gas & Electric Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939. [Same as Item 1 of Counter Praecipe of Columbia Gas and not repeated in the record. See page 583.]

2. Objections of Columbia Oil & Gasoline Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939. [Same as Item 2 of Counter Praecipe of Columbia Gas and not repeated in the record. See page 581.]

3. Plaintiff's exceptions to the report of William Prickett, Esq., Special Master, filed in August, 1939. [Same as Item

3 of Counter Praecipe of Columbia Gas and not repeated in the record. See page 589.]

[fol. 862] 4. Opinion of the United States Circuit Court of Appeals for the Third Circuit, filed December 15, 1939, on two appeals of Missouri-Kansas Pipe Line Company from two orders of the District Court denying its application for leave to intervene, and reported in 108 F. (2d) 614.

5. First paragraph under heading "Introduction" in the "Brief on Behalf of Columbia Oil & Gasoline Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Plan for the Modification of the Consent Decree Entered in This Action", filed on or about May 22, 1940.

6. First two paragraphs under heading "Nature of This Motion" in the "Brief on Behalf of Columbia Gas & Electric Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Certain Plan", filed on or about May 22, 1940.

7. Report of Gano Dunn, Trustee, for the period of January 29, 1936 to July 29, 1936, dated August 11, 1936, with the following exhibits or portions thereof: [Same as Item 7 in the Counter Praecipe of Columbia Gas and not repeated in the record. See page 221.]

Exhibit C—Financing agreement, dated January 31, 1936, between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation. [Item appears in Counter Praecipe of Columbia Gas and not repeated in the record. See page 229.]

Exhibits D and E—Letters of Gano Dunn, dated February 28, 1936, to Panhandle Eastern Pipe Line Company and to Columbia Gas & Electric Corporation and Columbia Oil [fol. 863] & Gasoline Corporation approving the financing agreement of January 31, 1936. [Item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 238.]

Exhibit F—Gas contract, dated March 17, 1936, between Panhandle Eastern Pipe Line Company and Michigan Gas

Transmission Corporation, together with Exhibit A annexed thereto being gas contract, dated August 31, 1935, between Panhandle Eastern Pipe Line Company and Detroit City Gas Company. [Item appears in Counter Praecipe of Columbia Gas and not repeated in the record. See page 241.]

Exhibit G—Letter, dated March 17, 1936, of Gano Dunn to Panhandle Eastern Pipe Line Company approving contract between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, dated March 17, 1936. [Same item appears in Counter Praecipe of Columbia Gas and not repeated in the record. See page 318.]

Exhibit K—Three party agreement, dated June 1, 1936, between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and the Receivers of Missouri-Kansas Pipe Line Company, with Exhibits C and F, and all exhibits to Exhibit F except Exhibits D and E. [Same item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 319.]

The following portions of Exhibit L—

(a) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on March 24, 1936, beginning with the heading "Declaration of Stock Dividend" down to, but not including, heading "Construction Program and Authorization". [Same item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 347.]

(b) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on April 7, 1936, consisting of paragraph entitled "Subscription Rights". [Item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 358.]

[fol. 864] (c) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 5, 1936, beginning with the heading "Report of Approval of Offer made by Columbia Oil & Gasoline Corporation to Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Sala-

ries and Compensation". [Same item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 360.]

(d) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 19, 1936, beginning with the heading "Settlement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and the Receivers of Missouri-Kansas Pipe Line Company". [Same item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. (See page 369.]

8. Order of John P. Nields, District Judge, entered in this cause on November 1, 1939, upon petition of Missouri Kansas Pipe Line Company ordering the postponement of the hearing on the exceptions to the report of William Prickett, Esq., Special Master, with respect to the Plan, and the petition on which said order is based. [Same item appears in Counter Praecipe of Columbia Gas and is not repeated in this record. See page 596.]

(Sgd.) Daniel O. Hastings, Solicitor for Columbia Oil & Gasoline Corporation.

June 27, 1940.

Service of the attached praecipe is herewith acknowledged this 28th day of June, A. D. 1940.

(Sgd.) Stewart Lynch, C. A. Southerland, C. S. Layton, C. Edward Duffy, Logan and Duffy.

[fol. 865] IN UNITED STATES DISTRICT COURT

AMENDMENT TO COUNTER PRAECIPE OF COLUMBIA GAS & ELECTRIC CORPORATION ON APPEAL OF MISSOURI-KANSAS PIPE LINE COMPANY—Filed July 13, 1940

To the Clerk of the United States District Court for the District of Delaware:

Columbia Gas & Electric Corporation hereby amends the praecipe filed in this cause on June 28, 1940, by striking out

from the said praecipe Item 4 thereof specifying the inclusion in the transcript of record on appeal of the opinion of the United States Circuit Court of Appeals for the Third Circuit, and Items 5 and 6 thereof specifying the inclusion in the transcript of record on appeal of certain paragraphs of certain briefs filed by Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation in support of confirmation of the Report and Recommendation of the Special Master.

(Sgd.) C. A. Southerland, Solicitor for Columbia Gas & Electric Corporation.

Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) Arthur G. Logan, Solicitor for Missouri-Kansas Pipe Line Company. (Sgd.) Stewart Lynch, Solicitor for the United States of America. (Sgd.) Daniel O. Hastings, Solicitor for Columbia Oil & Gasoline Corporation and Charles A. Munroe. (Sgd.) C. S. Layton, Solicitor for John H. Hillman, Jr.

[fol. 866] IN UNITED STATES DISTRICT COURT

AMENDMENT TO COUNTER PRAECIPE OF COLUMBIA OIL & GASOLINE CORPORATION ON APPEAL OF MISSOURI-KANSAS PIPE LINE COMPANY—Filed July 16, 1940

To the Clerk of the United States District Court for the District of Delaware:

Columbia Oil & Gasoline Corporation hereby amends the praecipe filed in this cause on June 28, 1940, by striking out from the said praecipe Item 5 thereof specifying the inclusion in the transcript of record on appeal of the opinion of the United States Circuit Court of Appeals for the Third Circuit, and Items 5 and 6 thereof specifying the inclusion in the transcript of record on appeal of certain paragraphs of certain briefs filed by Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation in support

of confirmation of the Report and Recommendation of the Special Master.

(Sgd.) Daniel O. Hastings, Solicitor for Columbia Oil & Gasoline Corporation.

Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) C. Edward Duffy, Logan and Duffy, Solicitor for Missouri-Kansas Pipe Line Company. (Sgd.) Stewart Lynch, Solicitor for the United States of America. (Sgd.) C. A. Southerland, Solicitor for Columbia Gas & Electric Corporation. (Sgd.) C. S. Layton, Solicitor for John H. Hillman, Jr.

[fol. 867] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 868] In United States District Court

Order Denying Leave to Panhandle Eastern Pipe Line Company to Intervene—Filed April 23, 1940

And now, to-wit, this 23d day of April, A. D. 1940, the above stated cause coming on to be heard upon the motion of certain of the defendants, and affidavits in support thereof, to dismiss an application purporting to be an application of Panhandle Eastern Pipe Line Company praying for leave to become a party to the above entitled cause and for other relief in the said petition set forth, and the motion having been argued by the solicitors for the several parties and considered by the Court, it is

Ordered by the Court that the said motion be and it is hereby granted, and the said purported application shall be and it is hereby dismissed.

(Sgd.) John P. Nields, J.

[fol. 869] In United States District Court

Petition of Panhandle Eastern Pipe Line Company for Appeal—Filed June 14, 1940

Panhandle Eastern Pipe Line Company, petitioner, considering itself aggrieved by the decree made and entered on the 23d day of April, 1940, in the above-entitled cause,

does hereby appeal from said order and decree to the Supreme Court of the United States, and in support of this, its petition for appeal, shows unto the Court:

The action in this Court was brought by the United States under the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation and certain individuals to enjoin them from continuing to engage in a conspiracy in restraint of trade and commerce among the States in natural gas, from exercising any dominion or control over Panhandle Eastern Pipe Line Company, and from further restraining or interfering in any manner with the free and independent action of Panhandle Eastern Pipe Line Company in the production, transportation, or sale and delivery of natural gas. Said action also sought to dissolve the restraint and monopoly [fol. 870] by causing Columbia Oil & Gasoline Corporation to divest itself of all stock and bonds of Panhandle Eastern Pipe Line Company. The action was begun by the United States filing its petition on March 26, 1935. On October 30, 1935, the United States filed an amended and supplemental petition. Said amended and supplemental petition sets forth the following facts:

(a) The defendant Columbia Gas & Electric Corporation (hereinafter referred to as "Columbia Gas") was and is extensively engaged in trade and commerce among the States in natural gas through subsidiaries and affiliates, and as stated in the petition, "Its greatest concentration of operations is in the State of Ohio, in a large portion of which State it has for many years past enjoyed a virtual monopoly in the sales and distribution of natural mixed and artificial gas." (Par. 15.)

(b) The defendant Columbia Oil & Gasoline Corporation (hereinafter referred to as "Columbia Oil") was organized by Columbia Gas to hold the oil, gasoline and gas-producing properties of the so-called Columbia System. That is to say, the subsidiaries and affiliates of Columbia Gas above mentioned. (Par. 14.)

(c) Missouri-Kansas Pipe Line Company, (hereinafter referred to as "Mokan") was organized for the purpose of producing, transporting, distributing and selling natural gas. It caused the organization of Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle Eastern") and became the owner of the entire capital stock. [fol. 871] of said corporation. Panhandle Eastern was organized for the purpose of building and operating a natural gas pipe line from the gas-producing territories of the Texas Panhandle and Kansas, through the States of Oklahoma, Kansas, Missouri, Illinois and Indiana, up to the City of Indianapolis with extensions to the Cities of Detroit, Michigan and Dayton and Cincinnati, Ohio. (Par. 16.)

(d) The defendants engaged in a combination and a conspiracy in June, 1930, to restrain and monopolize trade and commerce among the States in natural gas, particularly in the States of Indiana, Michigan and Ohio, in violation of the anti-trust laws. The purpose of the defendants was to prevent Panhandle Eastern from making available, either directly or indirectly, its very large supplies of natural gas in such manner as to compete with the Columbia System or endanger its monopolization of the distribution and sale of natural gas in the States of Michigan and Ohio, and among other things, to bring Mokan and Panhandle Eastern to such a financial condition that the defendants would be enabled to acquire the complete domination and ownership of Panhandle Eastern's physical assets and properties. (Par. 17.)

(e) The defendants Columbia Oil and Columbia Gas were able to and did acquire 50 per cent of the common stock of Panhandle Eastern and all of its outstanding debt. (Pars. 18 and 22).

(f) Said defendants also obtained control of the Board of Directors and management of Panhandle Eastern. (Par. 23.)

[fol. 872] (g) Mokan retained 50 per cent of the common stock of Panhandle Eastern, but in order to maintain said 50 per cent interest, was required to advance approximately $5,000,000. In order to raise said amount, Mokan pledged its 50 per cent of the common stock of Panhandle Eastern. (Par. 24.)

(h) Thereafter, the defendants, through their control over Panhandle Eastern, prevented it from selling natural gas, and thus it had no earnings sufficient to make interest or dividend payments to Mokan which would have enabled Mokan to pay the interest on its debt. (Pars. 26 to 29.)

(i) Mokan was thereupon forced into receivership. (Par. 27.)

(j) Columbia Oil thereafter acquired control of substantially all of Mokan's 50 per cent interest in the common stock of Panhandle Eastern, thus giving the Columbia Companies control of Panhandle Eastern free from Mokan's minority interest. (Pars. 29 to 32.)

(k) Defendants were, at the time the petition was filed, engaged in other acts and transactions which would have given them 100 per cent ownership of the common stock of Panhandle Eastern. (Par. 31.)

On January 29, 1936, a stipulation was entered into between the parties to said action and a consent decree was entered thereon the same day.

[fol. 873] The stipulation provided, inter alia:

"The defendant Columbia Oil agrees to make, within 48 hours of the entry of the attached decree, a bona fide offer in writing to the Receivers of Missouri-Kansas Pipe Line Company appointed by the Delaware Chancery Court, providing among other things for the settlement of the claims of the Receivers asserted against the defendants herein and the acquisition by the Receivers of a direct interest in the stock of Panhandle Eastern Pipe Line Company, to the extent of one-half of the initial amount of common stock of Panhandle Eastern Pipe Line Company to be outstanding after a recapitalization thereof, * * *."

Pursuant to the provisions of the stipulation, an offer of settlement was made to the receivers of Mokan whereby they reacquired a direct interest in the stock of Panhandle Eastern. At present, the interest of Mokan is approximately 42% of the common stock in said company.

The consent decree also provided for the appointment of a trustee to hold the stock of Columbia Oil and to vote it for directors recommended by Columbia Oil. Gano Dunn was appointed as such trustee by said consent decree. His

power to vote as a stockholder on other matters than the election of directors is:

"(b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree."

The consent decree further provided:

"IV

That the defendants be and they are hereby perpetually enjoined from restraining or interfering in any manner in the freedom of Panhandle Eastern to contract or to finance or arrange the financing of all contracts, extensions (including the proposed new line to Detroit, whether or not built and owned by it), repairs, maintenance, service, or improvements necessary in its business through or with any [fol. 874] firm, person, or corporation with whom it may choose to deal (and to that end any such financial or contractual arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter):

That if such contracts be made with or financial assistance be secured from Columbia Gas, such contracts may be made or financial assistance furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment; and in the event that Columbia Gas shall, with respect to any contract or any contractual rights of any kind whatsoever or any property held as security or used in connection with any contract, in any way prevent the free transportation, sale and distribution of gas by Panhandle Eastern, then upon application to this Court or any court of competent jurisdiction Panhandle Eastern shall have the right (1) to the immediate appointment of a trustee to hold such contract rights or property subject to the purposes and provisions of this decree; (2) to immediate spe-

cific performance of any and all contracts with Columbia Gas; and (3) to immediate injunction, both temporary and final, as well as any other appropriate remedy at law or in equity, including any remedy hereunder.

V

That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

On December 21, 1939, the United States moved for leave to serve a supplemental complaint. The motion was granted and a supplemental complaint filed January 12, 1939. [fol. 875] In and by this supplemental complaint, the United States pointed out that there was, "Necessity for further action by this Court to achieve the purposes of the decree" (i. e. Consent Decree). This supplemental complaint then alleged:

"(a) In the period of almost three years which has elapsed since the entry of the decree of January 29, 1936, no steps of any kind have been taken toward the effective termination of all control by Columbia Gas of Panhandle Eastern, * * * The course of events since the entry of said decree on January 29, 1936, has made it increasingly clear (1) That the only effective and independent way to restore and maintain a position of free and independent action for Panhandle Eastern is to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern, as contemplated by the last paragraph of Section III of said decree, and (2) that to accomplish the purpose of said decree, by a further order requiring the formulation and submission to this Court for approval of a suitable plan or plans to accomplish such divestiture."

Said supplemental complaint prayed a divestiture either by Columbia Gas of its Columbia Oil Holdings or by Columbia Oil of its Panhandle Eastern holdings.

Thereafter, on May 15, 1939, the United States moved for leave to withdraw said supplemental complaint of January 21, 1938, to vacate the consent decree of January 29, 1936, and to file an amended and supplemental complaint. Annexed to said motion is a copy of the proposed amended and supplemental bill of complaint. In and by this amended and supplemental complaint, the Government alleges that the Columbia Companies have continued at all times since the entry of the consent decree to violate the anti-trust laws, [fol. 876] among other things, by continuing to exercise dominion and control over Panhandle Eastern notwithstanding the terms of said decree. Prayers "F" and "G" of said complaint specifically are that:

"F. The defendant Columbia Oil shall proceed forthwith to sell all interest which it may now have or may hereafter acquire in any securities of Panhandle Eastern.

"G. The defendant Columbia Gas shall proceed forthwith to sell all interest which it may now have or may hereafter acquire in any securities of Michigan Gas Transmission Company."

No proceedings have been had by the Court on said motion.

Instead, thereafter, on June 20, 1939, the defendants proposed that the consent decree be modified, and offered a plan purporting to end the restraint and monopoly.

Three weeks after the United States filed its supplemental complaint on December 21, 1938, as aforesaid, Mokan filed a motion for leave to intervene in the cause. This motion was denied. On June 5, 1939, after the United States had filed its motion to file an amended and supplemental complaint, Mokan again sought leave to intervene. This was denied. Mokan took appeals from the orders denying it leave to intervene to the United States Circuit Court of Appeals for the Third Circuit, which appeals were dismissed (110 F. (2d) 15) on the ground that under the provisions of the so-called "Expediting Act", 15 U. S. C. A. Sec. 29 as interpreted by the Supreme Court of the United States in the case of United States vs. California Co-operative Canneries, 279 U. S. 553, 73 L. Ed. 838, appeals to in- [fol. 877] tervene in a cause such as the instant one, wherein

the United States is complainant, could only be taken to the Supreme Court of the United States and that there was no jurisdiction in the Circuit Court to entertain the appeals. A petition for writs of certiorari to review said decision of the Circuit Court of Appeals was denied on the 22d day of April, 1940.

On January 15, 1940, Mokan, as the owner and holder of 339,275 shares of the common stock of Panhandle Eastern, made demand upon Panhandle Eastern and the officers and directors thereof, including the trustee appointed by the consent decree, that an application be made by Panhandle Eastern for the relief to which it is entitled under Sections IV and V of the consent decree, (i. e. under said above quoted provisions that, etc.). But Panhandle Eastern, its officers and directors, neglected and refused to comply with said demand and take said action against the defendants, due to the fact that its board of directors is controlled by the defendants and nominees of Columbia Oil who are acting in concert with Columbia Gas and Columbia Oil to restrain trade in natural gas. Columbia Oil is the beneficial owner of 404,326 shares of the common stock of Panhandle Eastern, which constitutes in excess of 50% of the total issued and outstanding and is the beneficial owner of all the issued and outstanding preferred stock of Panhandle Eastern. The stock beneficially owned by Columbia Oil has voting rights sufficient to elect two more than a majority of directors. This stock stands in the name of Gano Dunn [fol. 878] as Trustee under the consent decree. He has acted for Columbia Oil in placing their nominees on the Board of Panhandle Eastern and has taken directions from it at all times as to the manner in which the affairs of Panhandle Eastern should be conducted. The application of Missouri-Kansas Pipe Line Company, states, inter alia:

"The reason Panhandle Eastern, its officers and directors have not taken action is that said Board is controlled by said Gano Dunn and five nominees of Columbia Oil who are acting in concert with Columbia Gas and Columbia Oil to restrain trade in natural gas as aforesaid to the great loss and damage of Panhandle Eastern.".

At the annual meeting of stockholders of Panhandle Eastern held on March 11, 1940, resolutions were proposed

that Panhandle Eastern take the action which Mokan demanded that it take. The resolutions were in the following forms:

"Whereas by letter dated January 15, 1940, to this corporation, its directors and officers, Missouri-Kansas Pipe Line Company, a substantial stockholder of this corporation, proposed and demanded that certain action be taken by this corporation; and

Whereas, this corporation, its officers and directors have failed and neglected to comply therewith in any respects; and

Whereas it is the sense of this meeting that the actions set forth in said letter, a copy of which was ordered to be made a part of the minutes of the Board of Directors of this corporation of January 17, 1940, constitute causes of action, which are assets of this corporation and should be pursued;

Now, Therefore, be it resolved that this corporation take the actions set forth and described in paragraphs 1 to 6 inclusive of said letter of January 15, 1940 and

[fol. 879] Be it Further Resolved that the officers of this corporation employ and hereby do employ Robert J. Bulkley, of Cleveland, Ohio, Russell Hardy, of Washington, D. C., and Arthur Logan, of Wilmington, Delaware, as its attorneys to undertake said proceedings by filing such suits in such Courts and taking such appeals with respect thereto as they in their judgment deem necessary and advisable; and

Be it Further Resolved that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services."

The letter of January 15, 1940, had included a demand that Panhandle Eastern make application under Section V of the aforesaid consent decree for the relief to which it is entitled under Section IV, and the letter had set forth the particular nature of the relief to which Panhandle Eastern was entitled and the acts of the Columbia Companies giving such rights which were in many ways in violation of the consent decree. The application filed herein by Panhandle Eastern alleges matters and facts stated in said letter and makes application for leave to intervene and assert the

rights said letter had demanded that Panhandle Eastern pursue under the provisions of Section V of said consent decree.

The foregoing resolutions were put to a vote at which time all stockholders present and all proxies for stockholders, including the proxies for Mokan, voted in favor of the resolutions, except Mr. Dunn, who voted against them. The Chairman declared the motion to adopt the resolutions was lost. At the time Mr. Dunn's vote was challenged upon the grounds that he could not vote against the resolutions because:

[fol. 880] a. He had not been directed to do so by Columbia Oil and Gasoline Corporation, or

b. If he had been so directed, such directions would have been inconsistent with the purposes of the consent decree and hence could not be followed.

It is obvious that Section V of the Decree, in so far as it permits Panhandle Eastern to intervene "upon proper application" is a nullity if the words "upon proper application" are construed to mean an application made after corporate action by Panhandle Eastern in which Columbia Oil participates. Any proceedings that might be taken by Panhandle Eastern under Section IV of the Decree would be adverse to the defendants in this case. If the Columbia Oil stock can be voted so as to block any action under Section V, it will obviously be voted that way. Therefore, when the stockholders other than Gano Dunn on behalf of Columbia voted that Panhandle Eastern should intervene and assert its right against Columbia under Section V of the decree, Messrs. Bulkley, Hardy and Logan prepared and filed the instant application under and pursuant to the resolutions aforesaid upon the theory that the vote of Gano Dunn was invalid and should not have been entertained and that, therefore, the resolutions had been properly adopted by the corporation.

After said application herein was filed, motions to dismiss were made by Columbia Oil and others. The District Court in its opinion held:

[fol. 881] "The motion to dismiss the alleged application of Panhandle Eastern for leave to become a party hereto

and for other relief must be granted for the following reasons:

1. Said application was not authorized by Panhandle Eastern.

2. The attorneys whose names appear on said application as attorneys for Panhandle Eastern were not authorized by that company to act in its behalf in filing such application.

3. Gano Dunn, Trustee, duly voted the shares of stock of Panhandle Eastern on all matters on which he voted at the annual meeting of March 11, 1940, in accordance with provisions of said consent decree, and pursuant to valid directions from Columbia Oil."

As Panhandle Eastern has neglected and refused to make an application in the cause to become a party for the purpose of enforcing the rights conferred upon it by Section IV of the consent decree, which neglect and refusal is occasioned through the domination and control which the Columbia Companies continue to exert over Panhandle Eastern, its officers and directors, and as the rights conferred by Section IV are valuable rights under the decree as aforesaid against the Columbia Companies and those acting with them to prevent Panhandle Eastern Pipe Line Company from engaging freely and independently in trade and commerce among the states in natural gas, the decree of the United States District Court for the District of Delaware, denying Panhandle Eastern leave to intervene and assert these valuable rights constitutes, unless reversed, an effectual deprivation of those rights, including the right to a full and complete enjoyment of the consent decree.

[fol. 882] Petitioner files herein its assignment of errors which specifies the reasons for which it considers itself aggrieved by the decree and order entered herein on April 23, 1940.

Petitioner also files herewith its Jurisdictional Statement.

Wherefore, petitioner prays that this appeal may be allowed and that a citation issue as provided by law directed to the respondents above named commanding them and each of them to be and appear before the Supreme Court of the United States to do and receive what may appertain to equity and justice in the premises and that the decree and

order denying the application of Panhandle Eastern Pipe Line Company be reversed.

Dated June 14, 1940.

Panhandle Eastern Pipe Line Company, by (Sgd.) Arthur G. Logan, 303 Delaware Trust Building, Wilmington, Delaware, Its Attorney.

Robert J. Bulkley, Bulkley Building, Cleveland, Ohio; Russell Hardy, 720 Fifteenth Street, Washington, D. C.; Arthur G. Logan, Delaware Trust Building, Wilmington, Delaware, of Counsel.

[fol. 883] IN UNITED STATES DISTRICT COURT

PANHANDLE EASTERN PIPE LINE COMPANY'S ASSIGNMENT OF ERRORS—Filed June 14, 1940

Now Comes Panhandle Eastern Pipe Line Company, petitioner in the above-entitled cause, appellant, by its attorneys, and files the following assignment of errors upon which it will rely on its appeal herein to the Supreme Court of the United States:

1. The Court erred in denying the application of Panhandle Eastern Pipe Line Company for relief under the consent decree of the Court entered on January 29, 1936.

2. The Court erred in granting the motions of the defendants to dismiss the application of Panhandle Eastern Pipe Line Company and dismissing said application.

3. The Court erred in entering the decree on April 23rd, 1940, and holding that said application was not authorized by Panhandle Eastern Pipe Line Company.

4. The Court erred in holding that the attorneys, whose names appear on said application as attorneys for Panhandle Eastern Pipe Line Company were not authorized by that company to act in its behalf in filing such application.

5. The Court erred in holding that Gano Dunn, Trustee, duly voted the shares of stock of Panhandle Eastern Pipe Line Company on all matters in which he voted at the annual meeting on March 11, 1940, in accordance with the provisions of said consent decree and pursuant to valid directions from Columbia Oil and Gasoline Corporation.

[fol. 884] 6. The court erred in not holding that Gano Dunn should not have voted upon the resolution proposing that Panhandle Eastern Pipe Line Company take the actions set forth and described in Paragraphs 1 to 6 inclusive of the letter of January 15, 1940, from Missouri-Kansas Pipe Line Company to Panhandle Eastern Pipe Line Company, its officers and directors.

7. The Court erred in not holding that the resolution proposed at the annual meeting of stockholders on March 11, 1940, that Panhandle Eastern Pipe Line Company take the actions set forth and described in Paragraphs 1 to 6 inclusive of the letter of January 15, 1940, from Missouri-Kansas Pipe Line Company to Panhandle Eastern Pipe Line Company, its officers and directors, was not duly adopted and passed and became binding upon all parties in interest and was the action of Panhandle Eastern Pipe Line Company.

Wherefore, the petitioner-appellant prays that the decree of the United States District Court for the District of Delaware entered on April 23, 1940, denying the application of Panhandle Eastern Pipe Line Company, be reversed by the Supreme Court of the United States, and that petitioner-appellant be granted the relief prayed for by it in its application.

(Sgd.) Arthur G. Logan, Logan and Duffy, 303 Delaware Trust Building, Wilmington, Delaware, Attorneys for Panhandle Eastern Pipe Line Company, Petitioner-Appellant.

Robert J. Bulkley, Bulkley Building, Cleveland, Ohio; Russell Hardy, 729 Fifteenth St., Washington, D. C.; Arthur G. Logan, Delaware Trust Bldg., Wilmington, Delaware.

[fol. 885] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL BY PANHANDLE EASTERN PIPE LINE COMPANY—Filed June 14, 1940

And Now, to-wit, this 14th day of June, A. D. 1940, the petition for appeal of Panhandle Eastern Pipe Line Company filed by Arthur G. Logan, Esq., as its attorney, to-

gether with the assignments of error, prayer for reversal and statement as to jurisdiction, having been presented to, read and maturely considered by the Court, upon motion of Arthur G. Logan, Esq., it is, pursuant to the statutes and the Rules of the Supreme Court of the United States in such case made and provided,

Ordered by the Court that an appeal as prayed for in said petition for appeal be and the same hereby is allowed to the Supreme Court of the United States from the District Court of the United States for the District of Delaware in this cause as provided by law; and

It is Further Ordered by the Court that security for costs on appeal be and the same hereby is fixed in the sum of Two Hundred Fifty Dollars ($250.00); and

It is Further Ordered by the Court that the Clerk of the District Court of the United States for the District of Delaware shall prepare and certify a transcript of the record, proceedings and decree and transmit the same to the Supreme Court of the United States and that he shall have the same in said Court on or before forty (40) days from this date.

(Sgd.) John P. Nields, J.

[fols. 886-887] Citation and Service on Appeal of Panhandle Eastern Pipe Line Company—Filed June 18, 1940, omitted in printing

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[fol. 888] In United States District Court

Praecipe of Panhandle Eastern Pipe Line Company for Transcript of Record on Appeal—Filed June 18, 1940

To the Clerk of the United States District Court for the District of Delaware:

Dear Sir:

You are hereby requested to prepare a transcript of record to be transmitted to the Supreme Court of the United States pursuant to the order allowing an appeal as prayed

for by Panhandle Eastern Pipe Line Company, which order was heretofore filed on June 14, 1940, in this cause, and to include therein the following papers:

1. Docket Entries.
2. Amended and supplemental petition of the plaintiff filed October 30, 1935.
3. Answer of defendants Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, and Edward Reynolds, Jr., filed January 29, 1936.
4. Answer of defendants Columbia Oil & Gasoline Corporation and Charles A. Munroe, filed January 29, 1936.
5. Answer of defendant John H. Hillman, Jr., filed January 29, 1936.
6. Answer of defendant Burt R. Bay, filed January 29, 1936.
7. Stipulation and Decree that defendants be enjoined [fol. 889] and appointing Gano Dunn as trustee, &c., filed January 29, 1936.
8. Amended and supplemental petition of plaintiff filed January 12, 1939.
9. Motion and attached petition of Missouri-Kansas Pipe Line Company for leave to intervene and order filed February 6, 1939.
10. Answer of John H. Hillman, Jr., defendant, filed February 24, 1939.
11. Opinion of Court filed March 29, 1939.
12. Order denying intervention filed March 30, 1939.
13. Answer of Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, and Edward Reynolds, Jr., filed May 15, 1939.
14. Answer of defendants Columbia Oil & Gasoline Corporation and Charles A. Munroe, filed May 15, 1939.
15. Motion of plaintiff for leave to withdraw supplemental complaint, filed May 15, 1939.
16. Motion of plaintiff to vacate decree, etc., filed May 15, 1939.
17. Motion and Plan of defendants Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation, filed June 20, 1939.
18. Motion and annexed petition of Missouri-Kansas

Pipe Line Company for leave to intervene and affidavit of service filed July 5, 1939.

[fol. 890] 19. Order denying intervention filed July 10, 1939.

20. Order of reference of Plan to special master dated July 10, 1939.

21. Opinion of William Prickett, Esq., Special Master, filed July 29, 1939.

22. Summary of plan, findings of fact, conclusions of law and recommendations of Special Master and testimony before him, filed July 29, 1939.

23. Report of William Prickett, Special Master, with papers therein mentioned, filed August 5, 1939.

24. Objections by Missouri-Kansas Pipe Line Company to report of Special Master, filed August 8, 1939.

25. Objections of City of Detroit to report of Special Master, filed August 12, 1939.

26. Application of Panhandle Eastern Pipe Line Company to be made a party, etc., and order setting same down for hearing. Filed March 23, 1940.

27. Motion of Columbia Gas & Electric Corporation to dismiss application of Panhandle Eastern Pipe Line Company with affidavits of Joe D. Creveling, Gano Dunn and D. M. Wilson, filed, March 29, 1940.

28. Motion of Columbia Oil & Gasoline Corporation to dismiss application of Panhandle Eastern Pipe Line Company with affidavits of Joe D. Creveling, Gano Dunn and Don M. Wilson, filed March 29, 1940. (Omit exhibits which are on motion of Columbia Gas & Electric Corporation #27.)

[fol. 891] 29. Opinion of Court, filed April 6, 1940.

30. Order denying application of Panhandle Eastern Pipe Line Company for leave to become a party, etc. filed, April 23, 1940.

31. Petition for Appeal, filed June 14, 1940.

32. Assignments of error, filed June 14, 1940.

33. Jurisdiction Statement, filed June 14, 1940.

34. Motion required by paragraph 2 of Rule 12 of the Rules of the Supreme Court with proof of service of it and papers required by said paragraph 2 of the Rules of the Supreme Court of the United States.

35. Copy of citation with proof of service.

36. Clerk's Certificate.
37. This praecipe with proof of service.

(Sgd.) Arthur G. Logan, Logan and Duffy, 303 Delaware Trust Bldg., Wilmington, Delaware, Attorneys for Panhandle Eastern Pipe Line Company.

Receipt is acknowledged of copy of the within and foregoing praecipe.

(Sgd.) Stewart Lynch, Attorney for the United States of America. (Sgd.) C. A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr. and Burt R. Bay. (Sgd.) Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe. (Sgd.) C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 892] IN UNITED STATES DISTRICT COURT

AMENDED PRAECIPE OF PANHANDLE EASTERN PIPE LINE COMPANY FOR TRANSCRIPT OF RECORD ON APPEAL—Filed July 1, 1940

To the Clerk of the United States District Court for the District of Delaware:

DEAR SIR:

You are hereby requested to amend the praecipe heretofore filed by Panhandle Eastern Pipe Line Company in the above-captioned matter in the following particulars:

1. Strike out paragraph 22 thereof and substitute in lieu thereof the following:

"22. Summary of Plan, Findings of Fact, Conclusions of Law and Recommendations of Special Master, filed July 29, 1939. Do not include testimony before Special Master."

2. Strike out paragraph 23 and substitute in lieu thereof the following:

"23. The report of William Prickett, Special Master, filed August 5, 1939, excluding documents returned therewith."

3. Add the following:

"38. Order allowing appeal entered June 14, 1940."

4. Change the word "motion" in item 34 to "notice".

5. Include this amended praecipe.

(Sgd.) Arthur G. Logan, Logan and Duffy, 400 Continental American Building Wilmington, Delaware, Attorneys for Missouri-Kansas Pipe Line Company.

[fol. 893] Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) Stewart Lynch, Attorney for the United States of America. (Sgd.) C. A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr. and Burt R. Bay. (Sgd.) Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe; C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 894] IN UNITED STATES DISTRICT COURT

AMENDED PRAECIPE OF PANHANDLE EASTERN PIPE LINE COMPANY FOR TRANSCRIPT OF RECORD ON APPEAL—Filed July 6, 1940

To the Clerk of the United States District Court for the District of Delaware:

DEAR SIR:

You are hereby requested to further amend the praecipe heretofore filed by Panhandle Eastern Pipe Line Company in the above-captioned matter in the following particulars:

1. Strike out paragraph 23 as amended and substitute in lieu thereof the following:

"23. The Report of William Prickett, Special Master, filed August 5, 1939, excluding documents returned therewith, except item #7."

2. Include this amended praecipe.

(Sgd.) Arthur G. Logan, Logan and Duffy, 400 Continental American Bldg., Wilmington, Delaware, Attorneys for Panhandle Eastern Pipe Line Company.

Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) Stewart Lynch, Attorney for the United States of America; C. A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas G. Gregory, Edward Reynolds, Jr. and Burt R. Bay; Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe; C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 895] IN UNITED STATES DISTRICT COURT

COUNTER-PRAECIPE OF COLUMBIA GAS & ELECTRIC CORPORATION ON APPEAL OF PANHANDLE EASTERN PIPE LINE COMPANY—Filed June 28, 1940

To the Clerk of the United States District Court for the District of Delaware:

DEAR SIR:

You are hereby requested to include in the Transcript of Record on the purported appeal by Panhandle Eastern Pipe Line Company from the order entered in the above cause on April 23, 1940, of which said appeal notice was filed on June 14, 1940, in addition to the matters set forth in the praecipe purportedly filed by the said Panhandle Eastern Pipe Line Company on or about June 14, 1940, the following papers:

1. Objections of Columbia Gas & Electric Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939.

2. Objections of Columbia Oil & Gasoline Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939.

3. Plaintiff's exceptions to the report of William Prickett Esq., Special Master, filed in August, 1939.

[fol. 896] 4. Opinion of the United States Circuit Court of Appeals for the Third Circuit, filed December 15, 1939, on two appeals of Missouri-Kansas Pipe Line Company from two orders of the District Court denying its application for leave to intervene, and reported in 108 F. (2d) 614.

5. First paragraph under heading "Introduction" in the "Brief on Behalf of Columbia Oil & Gasoline Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Plan for the Modification of the Consent Decree Entered in This Action", filed on or about May 22, 1940.

6. First two paragraphs under heading "Nature of This Motion" in the "Brief on Behalf of Columbia Gas & Electric Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Certain Plan", filed on or about May 22, 1940.

7. Report of Gano Dunn, Trustee, for the period of January 29, 1936 to July 29, 1936, dated August 11, 1936, with the following exhibits or portions thereof:

Exhibit C—Financing agreement, dated January 31, 1936, between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation.

Exhibits D and E—Letters of Gano Dunn, dated February 28, 1936, to Panhandle Eastern Pipe Line Company and to Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation approving the financing agreement of January 31, 1936.

Exhibit F—Gas contract, dated March 17, 1936, between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, together with Exhibit A annexed thereto being gas contract, dated August 31, 1935, between Panhandle Eastern Pipe Line Company and Detroit City Gas Company.

Exhibit G—Letter, dated March 17, 1936, of Gano Dunn [fol. 897] to Panhandle Eastern Pipe Line Company approving contract between Panhandle Eastern Pipe Line

Company and Michigan Gas Transmission Corporation, dated March 17, 1936.

Exhibit K—Three party agreement, dated June 1, 1936, between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and the Receivers of Missouri-Kansas Pipe Line Company, with Exhibits C and F, and all exhibits to Exhibit F except Exhibits D and E.

The following portions of Exhibit L—

(a) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on March 24, 1936, beginning with the heading "Declaration of Stock Dividend" down to, but not including, heading "Construction Program and Authorization".

(b) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on April 7, 1936, consisting of paragraph entitled "Subscription Rights".

(c) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 5, 1936, beginning with the heading "Report of Approval of Offer made by Columbia Oil & Gasoline Corporation to Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Salaries and Compensation".

(d) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 19, 1936, beginning with the heading "Settlement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and the Receivers of Missouri-Kansas Pipe Line Company".

8. Order of John P. Nields, District Judge, entered in this cause on November 1, 1939, upon petition of Missouri-Kansas Pipe Line Company ordering the postponement of [fol. 898] the hearing on the exceptions to the report of William Prickett, Esq., Special Master, with respect to the plan, and the petition on which said order is based.

(Sgd.) C. A. Southerland, Solicitor for Columbia Gas & Electric Corporation.

June 27, 1940.

[fol. 899] IN UNITED STATES DISTRICT COURT

COUNTER PRAECIPE OF COLUMBIA OIL & GASOLINE CORPORATION ON APPEAL OF PANHANDLE EASTERN PIPE LINE COMPANY—Filed June 28, 1940

To the Clerk of the United States District Court for the District of Delaware:

DEAR SIR:

You are hereby requested to include in the Transcript of Record on the purported appeal by Panhandle Eastern Pipe Line Company from the order entered in the above cause on April 23, 1940, of which said appeal notice was filed on June 14, 1940, in addition to the matters set forth in the praecipe purportedly filed by the said Panhandle Eastern Pipe Line Company on or about June 14, 1940, the following papers:

1. Objections of Columbia Gas & Electric Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939. [See Item 1 of Counter Praecipe of Columbia Gas—not repeated in the record. Turn to page 583.]

2. Objections of Columbia Oil & Gasoline Corporation to the report of William Prickett, Esq., Special Master, filed in August, 1939. [Same as Item 2 in Counter Praecipe of Columbia Gas and not repeated in the record. See page 581.]

3. Plaintiff's exceptions to the report of William Prickett, Esq., Special Master, filed in August, 1939. [Item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 589.]

[fol. 900] 4. Opinion of the United States Circuit Court of Appeals for the Third Circuit, filed December 15, 1939, on two appeals of Missouri-Kansas Pipe Line Company from two orders of the District Court denying its application for leave to intervene, and reported in 108 F. (2d) 614.

5. First paragraph under heading "Introduction" in the "Brief on Behalf of Columbia Oil & Gasoline Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Plan for the Modification of the Consent Decree Entered in This Action", filed on or about May 22, 1940.

6. First two paragraphs under heading "Nature of This Motion" in the "Brief on Behalf of Columbia Gas & Electric Corporation in Support of Its Motion to Confirm the Report and Recommendation of Special Master William Prickett Approving a Certain Plan", filed on or about May 22, 1940.

7. Report of Gano Dunn, Trustee, for the period of January 29, 1936 to July 29, 1936, dated August 11, 1936, with the following exhibits or portions thereof: [Same as Item 7 in the Counter Praecipe of Columbia Gas and not repeated in the record. See page 221.]

Exhibit C. Financing agreement, dated January 31, 1936, between Panhandle Eastern Pipe Line Company, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation. [Item appears in Counter Praecipe of Columbia Gas and not repeated in the record. See page 229.]

Exhibits D and E. Letters of Gano Dunn, dated February 28, 1936, to Panhandle Eastern Pipe Line Company and to Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation approving the financing agreement of January 31, 1936. [Items appear in Counter Praecipe of Columbia Gas and are not repeated in the record. See page 238.]

[fol. 901] Exhibit F. Gas contract, dated March 17, 1936, between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, together with Exhibit A annexed thereto being gas contract, dated August 31, 1935, between Panhandle Eastern Pipe Line Company and Detroit City Gas Company. [Item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 241.]

Exhibit G. Letter, dated March 17, 1936, of Gano Dunn to Panhandle Eastern Pipe Line Company approving contract between Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, dated March 17, 1936. [Item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 318.]

Exhibit K. Three party agreement, dated June 1, 1936, between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and the Receivers of Missouri-Kansas Pipe Line Company, with Exhibits C and F, and all exhibits to Exhibit F except Exhibits D and E. [Item

appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 319.]

The following portions of Exhibit L—

(a) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on March 24, 1936, beginning with the heading "Declaration of Stock Dividend" down to, but not including, heading "Construction Program and Authorization". [Item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 347.]

(b) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on April 7, 1936, consisting of paragraph entitled "Subscription Rights". [Item appears in Counter Praecipe of Columbia Gas and is not repeated in the record. See page 358.]

(c) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 5, 1936, beginning with the heading "Report of Approval of Offer made by Columbia Oil & Gasoline Corporation to Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Salaries and Compensation". [Item appears in Counter [fol. 902] Praecipe of Columbia Gas and is not repeated in the record. See page 360.]

(d) Extract from minutes of special meeting of the Board of Directors of Panhandle Eastern Pipe Line Company held on May 19, 1936, beginning with the heading "Settlement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation and Receivers of Missouri-Kansas Pipe Line Company" down to, but not including, heading "Agreement between Columbia Oil & Gasoline Corporation, Columbia Gas & Electric Corporation, Panhandle Eastern Pipe Line Company and the Receivers of Missouri-Kansas Pipe Line Company". [Not repeated. See page 369.]

8. Order of John P. Nields, District Judge, entered in this cause on November 1, 1939, upon petition of Missouri-Kansas Pipe Line Company ordering the postponement of the hearing on the exceptions to the report of William Prickett, Esq., Special Master, with respect to the Plan,

and the petition on which said order is based. [See page 596.]

(Sgd.) Daniel O. Hastings, Solicitor for Columbia Oil & Gasoline Corporation.

June 27, 1940.

Service of the attached praecipe is herewith acknowledged this 28th day of June, A. D. 1940.

(Sgd.) Stewart Lynch, C. A. Southerland, C. S. Layton, C. Edward Duffy, Logan and Duffy.

[fol. 903] IN UNITED STATES DISTRICT COURT

AMENDMENT TO COUNTER PRAECIPE OF COLUMBIA GAS & ELECTRIC CORPORATION ON APPEAL OF PANHANDLE EASTERN PIPE LINE COMPANY—Filed July 13, 1940

To the Clerk of the United States District Court for the District of Delaware:

Columbia Gas & Electric Corporation hereby amends the praecipe filed in this cause on June 28, 1940, by striking out from the said praecipe Item 4 thereof specifying the inclusion in the transcript of record on appeal of the opinion of the United States Circuit Court of Appeals for the Third Circuit, and Items 5 and 6 thereof specifying the inclusion in the transcript of record on appeal of certain paragraphs of certain briefs filed by Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation in support of confirmation of the Report and Recommendation of the Special Master.

(Sgd.) C. A. Southerland, Solicitor for Columbia Gas & Electric Corporation.

Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) Arthur G. Logan, Solicitor for Panhandle Eastern Pipe Line Company. (Sgd.) Stewart Lynch, Solicitor for the United States of America. (Sgd.) Daniel O. Hastings, Solicitor for Columbia Oil & Gasoline Corporation and Charles A. Munroe. (Sgd.) C. S. Layton, Solicitor for John H. Hillman, Jr.

[fol. 904] IN UNITED STATES DISTRICT COURT

AMENDMENT TO COUNTER PRAECIPE OF COLUMBIA OIL & GASOLINE CORPORATION ON APPEAL OF PANHANDLE EASTERN PIPE LINE COMPANY—Filed July 16, 1940

To the Clerk of the United States District Court for the District of Delaware:

Columbia Oil & Gasoline Corporation hereby amends the praecipe filed in this cause on June 28, 1940, by striking out from the said praecipe Item 4 thereof specifying the inclusion in the transcript of record on appeal of the opinion of the United States Circuit Court of Appeals for the Third Circuit, and Items 5 and 6 thereof specifying the inclusion in the transcript of record on appeal of certain paragraphs of certain briefs filed by Columbia Oil & Gasoline Corporation and Columbia Gas & Electric Corporation in support of confirmation of the Report and Recommendation of the Special Master.

(Sgd.) Daniel O. Hastings, Solicitor for Columbia Oil & Gasoline Corporation.

Receipt is acknowledged of copy of the within and foregoing amended praecipe.

(Sgd.) C. Edward Duffy, Logan and Duffy, Solicitor for Panhandle Eastern Pipe Line Company. (Sgd.) Stewart Lynch, Solicitor for the United States of America. (Sgd.) C. A. Southerland, Solicitor for Columbia Gas & Electric Corporation. (Sgd.) C. S. Layton, Solicitor for John H. Hillman, Jr.

[fol. 905] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 906] IN SUPREME COURT OF THE UNITED STATES

No. 268.

APPELLANT'S STATEMENT OF THE POINTS ON WHICH IT INTENDS TO RELY AND OF THE PARTS OF THE RECORD WHICH IT THINKS NECESSARY FOR THE CONSIDERATION THEREOF—Filed August 5, 1940

The appellant will rely upon the points stated in its assignment of errors, and upon the following points:

Rule 24 of the Federal Rules of Civil Procedure with regard to intervention was intended to clarify and enlarge the privilege of intervention beyond preexisting limitations, and not, as the District Court construed and applied the rule, to effect a curtailment of the intervention privilege.

The application of the appellant to intervene was timely, in that it was based upon facts showing a continuation of the same conspiracy dealt with in the main action, and its existence at the time of the intervention, and upon specific acts in violation of the decree of January 29, 1936, currently [fol. 907] occurring and in existence at the time of the intervention.

The application to intervene should have been allowed because the representation of appellant's interest by the existing parties may be inadequate.

The application should have been allowed because the appellant has an interest in the subject of the main action, which is a restraint and monopolization of trade in natural gas in violation of the antitrust laws, created and maintained by the defendants, in that appellant is a large stockholder of Panhandle Eastern Pipe Line Company, a majority of whose stock was illegally acquired and is being illegally held and used by the defendants to conduct, restrict and curtail the trade, business and affairs of Panhandle Eastern Pipe Line Company solely for the benefit of the defendants, contrary to the interest of Panhandle Eastern Pipe Line Company, of all of its stockholders, and of the public.

The application should have been allowed because the appellant has an interest in the relief demanded in the main action and awarded in terms by the decree, but which has never been actually realized by any compliance whatsoever on the part of the defendants with the requirements of the decree, i. e., specific requirements for the termination of the conspiracy and dissolution of the restraint and monopolization.

The application should have been allowed because appellant may be bound by a judgment in the main action, in that [fol. 908] a judgment might be entered, and in fact is actually currently proposed, which would in fact seriously prejudice or completely preclude the realization by the appellant of any effectual relief in another and independent proceeding.

The application should have been allowed because the

appellant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of an officer of the court.

The application should have been allowed because appellant's claim and the main action present common questions of law and fact, in that both deal with acts done in pursuance of one and the same conspiracy violative of the same statutes, i. e., the antitrust laws.

The application should have been allowed because the intervention would not have unduly delayed or prejudiced the adjudication of the rights of the original parties, because the main action and the intervention case were based on the same conspiracy.

The appellant thinks that all of the record, except the portions included at the request of the appellees which portions are enumerated in the cross-praecipes of appellees, is necessary for the consideration of the above points.

Arthur G. Logan, Logan and Duffy, Continental American Building, Wilmington, Delaware, Attorneys for Missouri-Kansas Pipe Line Company.

[fol. 909] Service of a copy of the foregoing statement is hereby admitted this 2nd day of August, 1940.

Stewart Lynch lb, Attorney for the United States of America. Clarence A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr. and Burt R. Bay. Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe. C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 909a] [File endorsement omitted.]

[fol. 910] IN SUPREME COURT OF THE UNITED STATES

No. 268

DESIGNATION BY APPELLEE COLUMBIA OIL & GASOLINE CORPORATION OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED —Filed August 10, 1940.

Columbia Oil & Gasoline Corporation, one of the appellees in the above entitled cause, although not conceding the ma-

teriality of all of the parts of the record set forth in the statement filed by appellant herein, hereby designates the following parts of the record which it thinks material, in addition to the parts of the record so set forth by appellant, pursuant to paragraph 9 of Supreme Court Rule 13, viz:

All the papers set forth in the cross-praecipe of appellee Columbia Oil and Gasoline Corporation indicating the additional portions of the record desired to be included in the transcript of the record, filed with the Clerk of the United States District Court for the District of Delaware on June 28, 1940, pursuant to paragraph 2 of Supreme Court Rule 10.

Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation, Continental American Building, Wilmington, Delaware.

Dated August 8, 1940.

[fol. 910a] [File endorsement omitted.]

[fol. 911] IN SUPREME COURT OF THE UNITED STATES

No. 268

[Title omitted]

STATEMENT BY APPELLEE OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED—Filed August 12, 1940

Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Eay and John H. Hillman, Jr., appellees in the above entitled cause, although not conceding the materiality of all of the parts of the record set forth in the statement filed by appellant herein, hereby designate the following parts of the record which they think material, in addition to the parts of the record so set forth by appellant, pursuant to paragraph 9 of Supreme Court Rule 13, viz:

The papers set forth in the designation of additional portions of the record desired to be included in the transcript [fol. 912] of the record, filed with the Clerk of the United States District Court for the District of Delaware on behalf of the above-mentioned appellee Columbia Gas & Electric

Corporation on June 28, 1940, pursuant to paragraph 2 of Supreme Court Rule 10.

Douglas M. Moffat, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay and John H. Hillman, Jr.

Dated August 9, 1940.

[fol. 912a] [File endorsement omitted.]

[fol. 913] IN SUPREME COURT OF THE UNITED STATES

No. 269

APPELLANT'S STATEMENT OF THE POINTS ON WHICH IT INTENDS TO RELY AND OF THE PARTS OF THE RECORD WHICH IT THINKS NECESSARY FOR THE CONSIDERATION THEREOF—Filed August 5, 1940

The appellant will rely upon the points stated in its assignment of errors.

The appellant thinks that all of the record, except the portions included at the request of the appellees which portions are enumerated in the cross-praecipes of appellees, is necessary for the consideration of the above points.

Arthur G. Logan, Logan and Duffy, Continental American Building, Wilmington, Delaware, Attorneys for Panhandle Eastern Pipe Line Company.

[fol. 914] Service of a copy of the foregoing statement is hereby admitted this 2nd day of August, 1940.

Stewart Lynch lb, Attorney for the United States of America. Clarence A. Southerland, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., and Burt R. Bay. Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe. C. S. Layton, Attorney for John H. Hillman, Jr.

[fol. 914a] [File endorsement omitted.]

[fol. 915] IN SUPREME COURT OF THE UNITED STATES

No. 269

DESIGNATION BY APPELLEE COLUMBIA OIL & GASOLINE CORPORATION OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED—Filed August 10, 1940

Columbia Oil & Gasoline Corporation, one of the appellees in the above entitled cause, although not conceding the materiality of all of the parts of the record set forth in the statement filed by appellant herein, hereby designates the following parts of the record which it thinks material, in addition to the parts of the record so set forth by appellant, pursuant to paragraph 9 of the Supreme Court Rule 13, viz:

All the papers set forth in the cross-praecipe of appellee Columbia Oil & Gasoline Corporation indicating the additional portions of the record desired to be included in the transcript of the record, filed with the Clerk of the United States District Court for the District of Delaware on June 28, 1940, pursuant to paragraph 2 of Supreme Court Rule 10.

Daniel O. Hastings, Attorney for Columbia Oil & Gasoline Corporation, Continental American Building, Wilmington, Delaware.

Dated August 8, 1940.

[fol. 915a] [File endorsement omitted.]

[fol. 916] IN SUPREME COURT OF THE UNITED STATES

No. 269

STATEMENT BY APPELLEE OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED—Filed August 12, 1940

Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay and John H. Hillman, Jr., appellees in the above entitled cause, although not conceding the materiality of all of the parts of the record set forth in the statement filed by appellant herein, hereby designate the following parts of the record which they think material, in addition to the

parts of the record so set forth by appellant, pursuant to paragraph 9 of Supreme Court Rule 13, viz:

The papers set forth in the designation of additional portions of the record desired to be included in the transcript of the record, filed with the clerk of the United States [fol. 917] District Court for the District of Delaware on behalf of the above-mentioned appellee Columbia Gas & Electric Corporation on June 28, 1940, pursuant to paragraph 2 of Supreme Court Rule 10.

Douglas W. Moffat, Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay and John H. Hillman, Jr.

Dated August 9, 1940.

[fol. 917a] [File endorsement omitted.]

Endorsed on cover: File No. 44,617. Delaware, D. C. U. S., Term No. 268. Missouri-Kansas Pipe Line Company, Appellant, vs. The United States of America, Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, et al. Filed July 22, 1940. Term No. 268 O. T. 1940.

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SUPREME COURT OF THE ~~UNITED~~ STATES

OCTOBER TERM, 1940

No. 268

MISSOURI-KANSAS PIPE LINE COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

STATEMENT AS TO JURISDICTION.

ARTHUR G. LOGAN,
Counsel for Appellant.

LOGAN & DUFFY,
ROBERT J. BULKLEY,
RUSSELL HARDY,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 268

MISSOURI-KANSAS PIPE LINE COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

MISSOURI-KANSAS PIPE LINE COMPANY'S JURISDICTIONAL STATEMENT.

Now comes Missouri-Kansas Pipe Line Company, petitioner in the above-entitled cause, appellant, and, for its jurisdictional statement in support of its petition for appeal filed herewith, shows as follows:

(a) The decree was rendered in a suit in equity brought under the anti-trust laws by the United States. The decree of the District Court appealed from denied Missouri-Kan-

sas Pipe Line Company leave to file its application (intervene) on behalf of Panhandle Eastern Pipe Line Company and to become a party to the cause for the purpose of enforcing certain rights.

The statute under which the jurisdiction of the Supreme Court is invoked is 15 U. S. C. A. § 29; Feb. 11, 1903, c. 544, § 2, 32 Stat. 823; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167, which is known as the "Expediting Act" and which reads:

> "Sec. 29. *Appeals to Supreme Court.* In every suit in equity brought in any district court of the United States, under any of the laws mentioned in the preceding section,* wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof. (Feb. 11, 1903, c. 544, § 2, 32 Stat. 823; Marc. 3, 1911, c. 231, § 291, 36 Stat. 1167.)"

(b) The following cases are believed to sustain jurisdiction:

Missouri-Kansas Pipe Line Company, Petitioner, v. *Columbia Gas & Electric Corporation et al.,* 110 F. (2d) 15, Cert. den. —— U. S. ——, 84 L. Ed. 739 (Advance Sheets #13) Causes #748 and #749;

United States v. *California Co-operative Canneries,* 279 U. S. 553, 73 L. Ed. 838.

The case of *Missouri-Kansas Pipe Line Company, supra,* has resolved the identical question here presented, in that the petitioner herein, Missouri-Kansas Pipe Line Com-

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* The preceding section, namely, Section 28, deals with equitable anti-trust suits in which the United States is complainant under the Anti-Trust Laws.

pany, at two earlier periods sought leave to intervene in this identical cause. At such times the District Court denied the applications to intervene as it subsequently denied the instant application, which denial is the subject-matter of the instant appeal. Appeals were taken from the earlier denials to the Circuit Court of Appeals. The Circuit Court of Appeals for the Third Circuit in the case above referred to and reported as aforesaid at 110 F. (2d) 15, held that the denials of the applications to intervene could not become the subject of an appeal to the Circuit Court of Appeals because under the provisions of the so-called "Expediting Act" that court had no jurisdiction to entertain such appeals, and that the only jurisdiction was in the Supreme Court of the United States. As we now have an appeal from an identical order such as that which the Circuit Court held is reviewable only by the Supreme Court of the United States, and as said decision of the Circuit Court was not reviewed upon the application of Missouri-Kansas Pipe Line Company for writs of certiorari, we submit that the decision of the Circuit Court resolves the question of jurisdiction here presented.

(c) There is appended hereto a copy of an opinion delivered on March 29, 1939, in this cause on the first occasion when Missouri-Kansas Pipe Line Company sought to intervene in the cause. No opinion was delivered the second time Missouri-Kansas Pipe Line Company sought to intervene and no opinion was delivered after the instant application was made and upon the rendering of the decree of April 23, 1940, sought to be reviewed. The opinion appended hereto states the grounds upon which the court acted in denying the first two motions for leave to intervene, and petitioner believes it states the grounds upon which the court acted in denying the instant application.

(d) The date of the decree sought to be reviewed is April 23, 1940. The date upon which the petition for appeal was presented is June 14, 1940.

Respectfully submitted,

(Sgd.) ARTHUR G. LOGAN,
(Sgd.) LOGAN AND DUFFY,
Attorneys for Petitioner-Appellant,
303 Delaware Trust Building,
Wilmington, Delaware.

ROBERT J. BULKLEY,
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Cleveland, Ohio;
RUSSELL HARDY,
729 Fifteenth Street,
Washington, D. C.;
ARTHUR G. LOGAN,
Delaware Trust Building,
Wilmington, Delaware,
Of Counsel.

EXHIBIT "A".

Opinion of the Court on Motion to Dismiss Application of Panhandle Eastern Pipe Line Company.

(Filed April 6, 1940.)

Motion to dismiss application to become a party for a limited purpose.

In the anti-trust suit of United States *v.* Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, and others, a consent decree was entered by this court January 29, 1936. The closing paragraph of the decree provides:

> "* * * that Panhandle Eastern, [Panhandle Eastern Pipe Line Company] upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

The sole question raised by the motion to dismiss is whether Panhandle Eastern has made a "proper application" to become a party to this suit. March 23, 1940, a document in the form of an unverified application to become a party was filed. This document is signed "Panhandle Eastern Pipe Line Company By Arthur G. Logan". Immediately below this signature appear "Arthur G. Logan Logan & Duffy Attorneys for Petitioner, 303 Delaware Trust Building, Wilmington, Delaware". Below and to the left of these signatures the following names of counsel are typed: "Russell Hardy", "Robert J. Bulkley", "Arthur G. Logan".

The propriety of the application to become a party turns upon the terms of the consent decree. By Section III of that decree Gano Dunn was appointed Trustee for the purposes and with the powers and duties set forth in that section. The decree further provides:

> "That within 10 days after the entry of this decree Columbia Oil shall transfer all of its stock now owned and thereafter all stock subsequently acquired in Panhandle Eastern, having present or potential voting

rights, to said trustee to hold the legal title to said stock and to exercise all the rights and privileges incidental to the absolute ownership thereof upon the following terms and conditions:

(a) To vote said stock for the election of as many directors of Panhandle Eastern as the number of shares thereof may be entitled to elect; *Provided,* that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recommended by the beneficial owner of said stock, in conference and with the advice of the trustee, and that, as to the directors so selected, the trustee is empowered to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree; subject, however, in this as well as in the exercise of all other powers to the authority of this Court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder;

(b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree;"

The business of a corporation is conducted by its board of directors and officers. The control of Panhandle Eastern was vested in the Trustee. He was one of the directors. He shared with Columbia Oil in the selection of the others. He was empowered to remove any of the other directors and replace such directors by others of his own choosing upon his own motion. As the board of directors chose the officers, the Trustee was the final word in the conduct of the business of Panhandle Eastern. This control should be borne in mind in construing paragraph (b) of the decree.

The selection of Gano Dunn as Trustee was made by the ttorney General of the United States as the person best ualified to serve in a very difficult and exacting position om a group of names submitted to him.

Notice of the regular annual stockholders' meeting of anhandle Eastern to be held March 11, 1940 was duly sent stockholders. It notified them that the proposed busiess to be considered at the meeting would be the election of irectors for the ensuing year, an amendment of the certifiate of incorporation, and such other business as might roperly come before the meeting.

Mindful of paragraph (b) of Section III of the decree, ano Dunn obtained from the executive head of Columbia il, the beneficial owner of the stock of Panhandle Eastern eld by him, directions as to voting said stock at the annual eeting. March 5, 1940, Don M. Wilson, a vice president f Columbia Oil and acting president, directed Gano Dunn vote the shares of stock held by him in favor of the amendent to the articles of incorporation proposed by the Board, nd as to other matters, excepting the election of directors, vote said shares "as, in his discretion, seemed best for he interest of Panhandle Eastern Pipe Line Company and enerally to support the management; that, in case any matrs were presented at the meeting on which he had any oubt as to how to vote, he could adjourn the meeting for sufficient time to confer by telephone with the representaves of Columbia Oil & Gasoline Corporation". March 8, 940, the board of directors of Columbia Oil adopted a resoution expressly approving said directions and also approvng a letter from Wilson to Dunn containing the followng directions:

"Dear Mr. Dunn:

After consultation with you, as Trustee holding the voting stock in Panhandle Eastern Pipe Line Company, which is owned by this Corporation, and with your advice, we recommend the following individuals for your selection as Directors of Panhandle Eastern Pipe Line Company, and request that you elect them as such by vote of the stock which you hold as Trustee:

Joseph A. Bower, 165 Broadway, New York City;
Joe D. Creveling, 90 Broad Street, New York City;
Gano Dunn, 80 Broad Street, New York City;
Walter G. Mortland, 37 East 64th St., New York City;
Richard C. Patterson, Jr., 1270 Sixth Avenue, New York City;
Robert C. Winmill, 1 Wall Street, New York City.

Very truly yours,

(Signed) D. M. Wilson,
Vice President."

Before determining upon the six directors named in the above letter, Columbia Oil in conference with Dunn recommended certain persons as directors and from among the number so recommended Dunn selected the six above named as the six of the nine directors of Panhandle Eastern which the stock beneficially owned by Columbia Oil was entitled to elect.

From the foregoing, it appears that Gano Dunn attended the annual meeting of March 11 girded with his own authority as Trustee, supplemented by all the directors from Columbia Oil that could have been anticipated in the normal course of human events.

March 11, 1940, at the opening of the annual stockholders' meeting, Creveling, President of Panhandle Eastern, took the Chair and called the meeting to order as provided in the by-laws. The Chairman announced the presence of a quorum. Thereupon, Logan, who appeared as a stockholder, moved that Dixon, an associate of Maguire, be made Chairman of the meeting "from this time forward". Creveling declared the motion out of order. Thereupon, Logan took an appeal from the ruling of the Chairman. A vote was taken. Gano Dunn voted to uphold the Chair while Logan and his associates voted the contrary. Creveling announced that his ruling had been upheld.

Shortly thereafter, Logan moved that Article 11 of the by-laws be amended to read:

"The property and business of this corporation shall be managed by its board of directors, consisting of 14 persons."

This drastic action of increasing the number of directors from 9 to 14 was proposed without notice thereof, and evidently with the intent to acquire control of a large and valuable property. The Chairman declared the motion out of order in view of Article 42 of the by-laws, providing that the by-laws may be altered or amended "if notice of the proposed alteration or amendment be contained in the notice of the meeting." An appeal was taken with the same result as in preceding instances.

Motions were made that the Class B stock be not allowed to vote; that officers of the company be chosen by the stockholders; that their salaries be fixed by the stockholders; that Maguire be made president and Tringham treasurer of the company. These motions were disposed of as the others had been. In each instance Dunn voted the majority of the voting stock against the motions, and Logan and his associates voted for the motions.

Hand moved that Panhandle Eastern become a party to the suit of Missouri-Kansas Pipe Line Company and Dammann against the Columbia companies. This motion was similarly disposed of. Hand further moved that the Class A stock of Panhandle Eastern be redeemed. This motion met the same fate.

The following motion concisely states the position of Logan and his associates throughout the meeting:

"Mr. President, I now move that this corporation refuse to accept any vote of Mr. Gano Dunn on any question unless he first establishes by competent proof that he has been directed by Columbia Oil and Gasoline Corporation to cast his vote in accordance with the way he may cast it due to the fact that this corporation is aware of the limitation upon his powers."

Later, Hand moved that Panhandle Eastern be directed to bring six suits as suggested in a letter of January 15, 1940

from Missouri-Kansas Pipe Line Company to Panhandle Eastern. The fourth item of this letter was an instruction that Panhandle Eastern intervene in this anti-trust suit by the United States pending in this Court. At this meeting a resolution was offered by Hand that Panhandle Eastern be directed to make the present application. Gano Dunn, holding a majority of the voting stock of Panhandle Eastern, voted against the resolution and it was accordingly defeated.

It was further moved:

"That this corporation will employ Robert J. Bulkley of Cleveland, Ohio, Russell Hardy of Washington, D. C., and Arthur Logan of Wilmington, Delaware, as its attorneys to take action provided for herein;" and further, "that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services".

Thereafter, the meeting adjourned, although as to adjournment Logan objected that Gano Dunn was not qualified to vote without producing before the meeting specific instructions from Columbia Oil.

After adjournment Logan and his associates held a meeting of their own. No quorum was present. Holders of a minority of the stock of Panhandle Eastern, either in person or by proxy, were the only persons present. The motions of Logan and of his associates, defeated at the regular meeting, were resubmitted at the subsequent meeting, and purported to be passed.

March 20, 1940, a special meeting of the Board of Directors of Columbia Oil was held. The Chairman stated that he had received an official stenographic transcript of the proceedings of the annual meeting of stockholders of Panhandle Eastern of March 11, 1940. Upon consideration of those minutes and of the manner in which Gano Dunn, Trustee, had voted the stock in Panhandle Eastern, it was resolved:

"That all of the votes and all of the positions taken by said Gano Dunn as Trustee or otherwise at said stockholders' meeting be and the same hereby are in all respects approved, ratified and confirmed".

In construing the language of the consent decree, I find hat the votes cast by Gano Dunn were authorized by the owers conferred upon him by the consent decree and that is votes were well within the directions given to him by Columbia Oil. From this finding, it follows that the so-alled application filed in this proceeding was not authorized y Panhandle Eastern or by any responsible body having ontrol of said corporation.

The motion to dismiss the alleged application of Pan-andle Eastern for leave to become a party hereto and for ther relief must be granted for the following reasons:

1. Said application was not authorized by Panhandle Eastern.

2. The attorneys whose names appear on said application s attorneys for Panhandle Eastern were not authorized by hat company to act in its behalf in filing such application.

3. Gano Dunn, Trustee, duly voted the shares of stock of Panhandle Eastern on all matters on which he voted at the nnual meeting of March 11, 1940, in accordance with pro-isions of said consent decree, and pursuant to valid direc-ions from Columbia Oil.

And order may be submitted.

(Sgd.) JOHN P. NIELDS, *J.*

April 6, 1940.

EXHIBIT "B".

Opinion of the Court on Motion of Missouri-Kansas Pipe Line Company for Leave to Intervene.

(Filed March 29, 1939.)

MOTION FOR LEAVE TO INTERVENE.*

Missouri-Kansas Pipe Line Company, a Delaware corporation, moves the court for an order granting it leave to intervene in this proceeding and to file the petition annexed to its motion and requiring defendants respectively to answer or otherwise plead thereto.

Petitioner alleges it owns 324,326 shares of the 728,652 shares of the outstanding common stock of Panhandle Eastern Pipe Line Company.

This suit in equity was brought by the Attorney General of the United States under the Anti-Trust acts. The defendants duly answered and denied the material allegations of the bill. Upon a stipulation between the parties to this cause a consent decree (hereinafter referred to as "consent decree") was entered on January 29, 1936. Section V of the decree provided:

"That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

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* In the interest of brevity, Columbia Gas & Electric Corporation will be referred to in this opinion as "Columbia Gas", Columbia Oil & Gasoline Corporation as "Columbia Oil", Panhandle Eastern Pipe Line Company as "Panhandle Eastern" and Missouri-Kansas Pipe Line Company as "Mokan".

December 21, 1938 United States of America filed its supplemental complaint praying, inter alia, that this court exercise the jurisdiction retained by it in section V above recited and in order to give full effect to said decree that this court enter judgment:

"3. Directing Columbia Gas to divest itself of all control, direct or indirect, legal or practical, of Panhandle Eastern, * * *

(a) Directing Columbia Oil to proceed straightway to formulate and submit to this court for approval; * * * a plan for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern;

(b) Directing Columbia Gas to proceed straightway to formulate and submit to this court for approval, as an alternative to any plan submitted by Columbia Oil pursuant to paragraph (a), * * * a plan for the sale or other disposition by it of all interest which it may have in any securities having present or potential voting rights in Columbia Oil.

4. Reconstituting the voting trust established pursuant to said decree of January 29, 1936, so as:

(a) To make the voting trustee a trustee for sale, * * *" for a limited term and with powers and duties appropriately defined.

The time for answer was extended by stipulation and the answer has not been filed to the Government's supplemental complaint.

February 6, 1939 Mokan filed its motion for leave to intervene in this suit and to file the petition annexed to its motion. The prayers of this petition are:

"1. That the defendants be adjudged guilty of contempt for failure to comply with and for having violated the terms, conditions and provisions of the Decree of this Court entered herein on January 29, 1936.

2. That said Decree be interpreted, enlarged and enforced as follows:

(a) That it be decreed that Columbia Gas holds as trustee for Panhandle Eastern its pipe line from Dana to Zionsville, Indiana, and from Zionsville to Detroit, Michigan, and that Columbia Gas be ordered and directed forthwith to transfer said line to Panhandle Eastern upon such terms and conditions for the security of its investment therein as this Court may deem just and to account to Panhandle Eastern for the issues and profits thereof.

(b) That Columbia Gas be ordered and directed forthwith to cause Michigan Gas Transmission Corporation to transfer to Panhandle Eastern any and all contracts or agreements for the supply of gas entered into with any municipalities, persons, firms or corporations in the States of Indiana, Michigan and Ohio, since the entry of the said Decree.

(c) That Columbia Oil be ordered forthwith to surrender to Panhandle Eastern at cost for cancellation its Class B preferred stock of Panhandle Eastern and 80,000 shares of the common stock of Panhandle Eastern.

(d) That Columbia Oil be ordered forthwith to sell its remaining stock of Panhandle Eastern to a purchaser or purchasers and upon terms to be approved by this Court.

(e) That the exceptions set forth in Article II of the decree be stricken out.

3. That Gano Dunn be removed as Trustee, and that a new Trustee be appointed pending divestiture by Columbia Oil of its Panhandle Eastern securities.

4. That such other or further relief may be granted as to the Court may seem just and equitable."

In prayer 1 Mokan seeks to raise a question of contempt by defendants in respect to alleged violations of the consent decree of January 29, 1936. By subdivisions (a) and (b) of prayer 2 Mokan seeks to raise a complicated question of property in a transmission line owned by Michigan Gas Transmission Corporation, a subsidiary of Columbia Gas, and extending from the terminus of Panhandle Eastern at

Dana, Indiana to Detroit, Michigan. By subdivision (c) of prayer 2 Mokan seeks to procure the retirement of 80,000 shares of common stock of Panhandle Eastern now held by Columbia Oil. By prayer 3 Mokan seeks to have the past conduct of the trustee appointed under the consent decree of January 29, 1936 inquired into in order that he may be removed for alleged violations of his trust. The statement of these prayers indicates how far they depart from the scope of the supplemental complaint and how serious a delay would be involved in the determination of the questions raised thereby.

Intervention of Right.

Intervention of right is governed by subdivision (a) of Rule 24 of the Federal Rules of Civil Procedure:

"(a) INTERVENTION OF RIGHT.—Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof."

Courts are unanimous in requiring prompt action on the part of an intervenor who seeks to assert rights in a suit to which he is not a party. The new rule above quoted requires that application for intervention be timely. It begins with the words "Upon timely application * * *." The matters of which petitioner complains,—the acquisition by Columbia Gas of ownership of the Detroit extension, the acquisition by Columbia Oil of class B preferred stock of Panhandle Eastern, the acquisition by Columbia Oil of common stock of Panhandle Eastern in connection with the Detroit financing, and the March 17, 1936 contract,—all took place before June 1, 1936. Columbia Gas and Columbia Oil have spent many millions of dollars carrying out

the transactions. Petitioner had full notice and knowledge of all these arrangements prior to their consummation. These details were set out in the offer of settlement made by Columbia Oil and Columbia Gas to Mokan and were accepted by Mokan after full hearing thereon in the court of Chancery of the State of Delaware. Obviously Mokan's application is not a timely one.

Clause (1) of subdivision (a) of Rule 24 is plainly inapplicable.

Clause (2) of subdivision (a) relates to cases in which the applicant for intervention has an interest in the action represented by a party so that the applicant may be bound by a judgment in the action. The question of adequacy of representation does not arise unless the applicant is represented in the action. Neither Mokan, as a substantial stockholder of Panhandle Eastern nor Panhandle Eastern, is represented by the United States. The interest of either of them will not be bound by a judgment on the supplemental complaint. The judgment of this court upon the issues tendered in the supplemental complaint will not bind Mokan or Panhandle Eastern. Such a judgment can not bind them with respect to the wholly different issues tendered by Mokan's proposed petition of intervention. Petitioner has no right to encumber the main action which is being conducted by the Attorney General with extraneous issues of a private nature. United States *v.* Radio Corporation, 3 F. Supp. 23, 25. United States *v.* Northern Securities Co., 128 Fed. 808, 813.

Clause 3 of subdivision (a) relates to cases in which the applicant will be adversely affected by a disposition of property in the custody of the court in which the applicant asserts an interest. This property consists of stock in Panhandle Eastern beneficially owned by Columbia Oil, and transferred to the voting trustee. In that stock neither Mokan nor Panhandle has any property right. Any disposition of that stock which would terminate control of Columbia Oil over Panhandle Eastern could not be regarded as adverse to either Panhandle Eastern or Mokan. On the contrary, Mokan seeks such disposition. Early in the English law a third person claiming an interest in prop-

erty under the control of the court was permitted by interrogatories to establish his claim to or lien upon such property. This principle found expression in old Equity Rule 37. The new rule does not specifically set forth the nature of the interest in the property which a person must have in order to establish his claim to intervention as a matter of right. It is improbable that the Supreme Court in promulgating this new rule intended to destroy well established principles as the basis of intervention as of right. It would produce chaos to require the courts to recognize the absolute right to intervention of strangers who had no legal or equitable interest in the subject matter of the action.

Clause 3 contemplates that the person having the right of intervention should have a legal interest in the property in the custody of the court. The res in this case is the Panhandle Eastern stock in the possession of Dunn. That stock is not being administered by the court. Dunn is not an administrative officer of the court. His duties as trustee merely contemplate the holding of Panhandle Eastern stock owned by Columbia Oil for the purpose of seeing that the provisions of the consent decree are carried out and that the affairs of Panhandle Eastern are free from the control and domination of Columbia Gas. Dunn is obliged to turn over to Columbia Oil all dividends except certain stock dividends. He must vote the stock in the manner directed by Columbia Oil. He is a mere watchman to see that the provisions of the consent decree are carried out. The stock of Panhandle Eastern is not "in the custody of the court or of an officer thereof" within the meaning of Rule 24(a).

Petitioner's final contention is that Rule 24(a) has broadened the well established principle to the extent of no longer requiring "any actual property interest in the res". This position is without authority to sustain it.

Permissive Intervention.

Permissive intervention is governed by subdivision (b) of Rule 24 of Rules of Civil Procedure:

"(b) PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action;

(1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

Clause (1) has no application. Clause (2). The prayers of the proposed petition of intervention diverge sharply from the subject matter of the supplemental complaint. Affording petitioner relief would fundamentally alter and seriously complicate the character of this proceeding. The bare statement of the prayers sufficiently indicates how far they depart from the scope of the Government's complaint and how serious a delay would be involved in the determination of the questions raised thereby. The situation thus falls squarely within the last sentence of subdivision (b), which codifies prior equity practice.

"The intervenor was not entitled to come into the suit for the purpose of having adjudicated a controversy solely between it and plaintiff. Issues tendered by or arising out of plaintiff's bill may not by the intervenor be so enlarged. It is limited to the field of litigation open to the original parties * * *. Introduction by intervention of issues outside those that properly may arise between the original parties complicates the suit and is liable to impose upon plaintiff a burden having no relation to the field of the litigation opened by his bill". Chandler Co. *v.* Brandtjen, Inc., 296 U. S. 53, 57, 59.

"It is apparent that, the right to become a party to the litigation being given, the range of activity of the newcomer in the prosecution or defense of the interest he is thus permitted to assert must necessarily be as extensive as, but no greater than, that allowed the original parties to the suit." Leaver *v.* K. & L. Box & Lumber Co., 6 F. (2d) 666.

Anti-Trust Suit.

An individual may not participate in a suit brought under the Anti-Trust Laws by the Attorney General of the United

States where the Attorney General does not consent to such intervention. In the present case the Attorney General affirmatively objects to the intervention. In its brief the government states that the United States opposes the motion of Mokan for leave to intervene "because (1) Mokan is not entitled to intervention of right, and (2) intervention by Mokan for the purposes set forth in its proposed petition would unduly complicate and delay the adjudication of the issues tendered by plaintiff's supplemental complaint". When the Anti-Trust laws are violated frequently there are private persons or corporations who feel themselves aggrieved.

Outside this suit Mokan can assert any claim for damages it may have against the defendants or for relief against Dunn for his alleged breaches of trust. Such a right has been recognized by this court.

"However the petitioner and other stockholders of Radio Corporation should not be deprived of their 'day in court'. The petitioner or any stockholder of Radio Corporation believing himself aggrieved by the action of General Electric or Westinghouse under or pursuant to the provisions of the consent decree may file a bill in this court seeking appropriate relief." United States *v.* Radio Corporation, 3 F. Supp. 23.

Mokan's motion for leave to intervene must be denied.

(Sgd.) JOHN P. NIELDS, *J.*

March 29, 1939.

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FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 268.

MISSOURI-KANSAS PIPE LINE COMPANY,
Appellant,

v.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, *et al.*

No. 269.

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,

v.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, *et al.*

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

BRIEF FOR APPELLANTS.

Opinions Below.

In No. 268, in which Missouri-Kansas Pipe Line Company is appellant, no opinion was written by the District Court.

In No. 269, in which Panhandle Eastern Pipe Line Company is appellant, the opinion of the Court below is reported at 32 Fed. Supp. 474, and is printed in the Record at pages 520-526.

Grounds of Jurisdiction.

These are appeals from two orders of the District Court for the District of Delaware, both entered April 23, 1940, denying applications of the appellants for relief as provided by the terms of a consent decree entered in a suit brought by the Attorney General to prevent and restrain violations of the Sherman Act and the Clayton Act (R. 541, 565).

A consent decree was entered in the case January 29, 1936, which, among other things, provided that under certain conditions appellant, Panhandle Eastern Pipe Line Company, might apply to the District Court for relief (R. 148-149).

In No. 269 Panhandle Eastern Pipe Line Company made such an application to the District Court (Rec. 412). The appeal is from an order denying that application (R. 565).

In No. 268 Missouri-Kansas Pipe Line Company made a similar application in a derivative capacity on behalf of Panhandle Eastern Pipe Line Company (R. 526). The appeal in No. 268 is from an order denying that application (R. 541).

Jurisdiction of this Court is based on the Expediting Act (15 U. S. C. A., Sec. 29), as follows:

> Sec. 29. *Appeals to Supreme Court.* In every suit in equity brought in any district court of the United States, under any of the laws mentioned in the preceding section, wherein the United States is

complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof. (32 Stat. 823, sec. 2; 36 Stat. 1167, sec. 291.)

The "preceding section", namely, section 28, deals with equitable anti-trust suits in which the United States is complainant.

See also:

Missouri-Kansas Pipe Line Co. v. *Columbia Gas & Electric Corp.*, 108 F. (2d) 614; cert. denied, April 22, 1940 (309 U. S. 687);

United States v. *California Co-operative Canneries*, 279 U. S. 553.

In *Missouri-Kansas Pipe Line Co.* v. *Columbia Gas & Electric Corp., supra,* on an appeal to the Circuit Court of Appeals for the Third Circuit that court held that the Supreme Court had exclusive jurisdiction of an appeal from an order denying intervention in a suit in equity under the anti-trust laws brought by the Attorney General. There the appellant in No. 268 sought to intervene under Rule 24 of the Rules of Civil Procedure in the same case in which both appellants here now seek relief. This Court denied certiorari April 22, 1940 (309 U. S. 687).

See Jurisdictional Statements filed herein.

Statement of the Case.

1. Description of Parties Involved.

Columbia Gas & Electric Corporation (hereinafter called Columbia Gas) and Columbia Oil & Gasoline Corporation (Columbia Oil) are the principal defendants.

Columbia Gas is a holding company engaged in the business of recovering and manufacturing natural and artificial gas, and transporting and distributing it principally in Ohio and adjacent states through about sixty subsidiaries which were consolidated together by Columbia Gas (R. 112). Columbia Oil was organized by Columbia Gas (R. 112). All of its preferred stock has been and is owned by Columbia Gas (R. 112, 387); its common stock was originally deposited under a voting trust, certificates being distributed to Columbia Gas stockholders (R. 112).

Panhandle Eastern Pipe Line Company (called Panhandle Eastern) around which all of this controversy centers was organized by Missouri-Kansas Pipe Line Company (R. 113). In the petition in this action the Government alleged that it was intended that Panhandle Eastern should run a natural gas pipe line from the Texas fields to Detroit, and sell and deliver natural gas in the Indiana-Ohio-Michigan area, a region in which the corporate defendants, through numerous subsidiaries, were already serving many places. The Panhandle Eastern line actually reached to the Indiana border in the year 1931. There it was brought to a standstill (Maps R. 540).

Missouri-Kansas Pipe Line Company (called Mokan), the appellant in No. 268, was organized for the purpose of producing, transporting, distributing, and selling natural gas. It caused the organization of Panhandle Eastern and became the owner of the entire capital stock of said corporation (R. 112, 122).

2. Proceedings Heretofore Had Pertinent to These Appeals.

On March 6, 1935, the Attorney General filed an original petition charging Columbia Gas, Columbia Oil and eight individuals with participating in a conspiracy to restrain

and monopolize trade in natural gas in violation of the Sherman Anti-Trust Act including particularly a restraint of any competition by Panhandle Eastern, and with making acquisitions of stock and other share capital of Panhandle Eastern in violation of the Clayton Act (R. 1).

An amended and supplemental petition was filed by the United States on October 30, 1935 (R. 10).

On January 29, 1936, the defendants filed answers and, on the same day, consented that a decree be entered against them, by which, *inter alia,* they were enjoined from exercising "any dominion or control over Panhandle Eastern and from restraining, or interfering in any manner with, the free and independent action of said Panhandle Eastern in the production, transportation, sale or delivery of natural gas" etc. (R. 144).

Three years later, on January 12, 1939, a second supplemental petition was filed by the Attorney-General alleging that up to that time "no steps of any kind have (had) been taken towards the effective termination of all control by Columbia Gas of Panhandle Eastern" and praying that the defendants be directed to submit a plan for compliance with the purposes of the consent decree (R. 281-282). No plan was submitted. No further action occurred until May 15, 1939, when the Attorney-General filed a motion with a proposed third amended and supplemental petition (R. 334) in which he characterized the consent decree as inadequate, ineffectual and a failure, and stated that under the consent decree "Columbia Gas has actually strengthened its position of control (over Panhandle Eastern) since that date", i. e., January 29, 1936 (R. 340).

On June 20, 1939, the defendants filed a proposed "Plan for Modification of the Consent Decree", which purports to comply with the law (R. 356).

On March 23, 1940, the instant application by Panhandle Eastern was filed for relief under express provisions of the Consent Decree that Panhandle Eastern might make such an application (R. 412). The application was denied in an opinion dated April 6, 1940, 32 F. (2d) 474, on the ground that it was unauthorized by the corporation for reasons which will later be explained in more detail (R. 520).

On April 16, 1940, after the opinion aforesaid, a similar, but derivative, application was filed by Mokan (as a Panhandle Eastern stockholder) on behalf of Panhandle Eastern. This application, although filed by Mokan, was solely in the right of Panhandle Eastern and for its benefit (R. 526).

Both applications were denied by orders dated April 23, 1940 (R. 541, 565).

At the date of the filing of the latter application, Mokan owned about 42 percent of the common stock of Panhandle Eastern; Columbia Oil owned 50.08 percent, and the balance was publicly owned (R. 448, 527).

3. Summary of Means Originally Used to Effectuate Conspiracy as Charged by Government.

The defendants had built a "Chinese Wall" to protect their position in the Indiana-Ohio-Michigan territory into which it was proposed to extend the Panhandle Eastern pipe line. The Government complaint charges that the purpose of the conspiracy was to preserve this territory for the Columbia interests by stopping the construction of the pipe line, by preventing it from entering and bringing gas to that region, by gaining control of the line, and, finally, by acquiring complete ownership thereof (R. 14, 27, 28).

Among the means used by the defendants the following are alleged:

Acquisition of Panhandle Stock. By contract dated September 17, 1930 Columbia Oil acquired fifty percent of the total outstanding stock of Panhandle Eastern. At that time Mokan owned all the Panhandle Eastern stock, and Mokan, Columbia Oil and National City Company of New York entered into a contract providing for the acquisition by Columbia Oil of half the Panhandle Eastern stock, for the issuance by Panhandle Eastern of $20,000,000 of first mortgage bonds, for the purchase thereof by National City Company, for the sale and daily delivery by Panhandle Eastern of large quantities of natural gas to Mokan and Columbia Gas (R. 15-20).

Procurement of a majority of the Panhandle Eastern directors. The Panhandle Eastern board consisted of nine directors. The contract provided that four should be named by Mokan and four by Columbia Oil. The ninth was to be a person who should act impartially between the two stockholders, and in the sole interest of the company. But the ninth director was alienated by the defendants, violated the agreement and became a participant with them in the conspiracy (R. 18-19).

Acquisition of Panhandle Eastern first mortgage bonds. $20,000,000 of Panhandle Eastern bonds were to be sold by the National City Company to the general public. The defendants induced the banking company to sell the entire issue to Columbia Oil, and thus the Columbia interests acquired a first mortgage lien upon the physical assets and property of Panhandle Eastern (R. 19-20).

Displacement of an independent Panhandle Eastern management. The defendants promptly removed all the officers and managing personnel of Panhandle Eastern (except Bay, who is one of the defendants herein) and sub-

stituted therefor persons who were responsive to their orders (R. 20).

Obstruction of Mokan in financing Panhandle Eastern. In 1931 Panhandle Eastern issued notes and additional stock to procure funds to go forward with the pipe line. In order to maintain its position of equal control, Mokan had to buy half of such notes and stock. Mokan hypothecated its fifty percent of the notes together with all of its fifty percent of the Panhandle Eastern stock in order to raise the money, using as an hypothecation device a corporation created for the purpose (R. 20-21).

The defendants attempted to persuade bankers and others not to deal with Mokan relative to this transaction, for the purpose of causing it to dispose of or to lose its stock interest in Panhandle Eastern (R. 21).

Refusal to sell gas to Mokan. The defendants, having obtained control of the Panhandle Eastern as aforesaid, first refused to permit it to sell gas to Mokan, as provided in the September 17, 1930 contract, except for resale in non-competitive areas; and, finally, they prevented Panhandle Eastern from selling gas to Mokan on any condition (R. 22-23). Columbia Oil failed to comply with its agreement to cause Columbia Gas to buy gas from Panhandle Eastern (R. 23).

Acquisition of remainder of Panhandle Eastern stock. Due to acts of the defendants, Mokan was forced into receivership (R. 23-24). Thereafter the defendants as part of the combination and conspiracy proposed several plans to acquire the 50% of the Panhandle Eastern stock then owned by Mokan (R. 23-28). In the Amended and Supplemental Petition of the Government filed on October 30, 1935 it is stated that "unless restrained" the defendants

will "either obtain ownership of 100% of the outstanding capital stock of Panhandle Eastern Pipe Line Company and retain ownership of the greater part of the funded debt of said corporation * * * or foreclose on the mortgage trust indenture * * * and thus secure the physical properties and assets of said Panhandle Eastern Pipe Line Company" (R. 27).

The plans of the defendants therefore were to and would have entirely and finally eliminated the Mokan interest in Panhandle Eastern and would have given the defendants complete and unfettered ownership and control over Panhandle Eastern. Thus the objects of the conspiracy would have been consummated.

4. The Consent Decree.

The Government Petition of Oct. 30, 1935, prayed, among other things, that Columbia Oil be required to divest itself of all of the stock and bonds of Panhandle Eastern. This prayer for separation of the controlling corporations from the unlawfully controlled corporation by divestiture of the unlawfully acquired stock, was the same method which had been used in all similar antitrust cases in which the Government has prevailed during fifty years of administration of the antitrust laws, of which there have been about twenty-three.

On January 29, 1936, the United States and the defendants entered into a stipulation for a consent decree, and a consent decree was entered on the same day (R., 138, 142).

The decree appointed a trustee (Gano Dunn) to receive and hold the Panhandle Eastern stock acquired by Columbia Oil and to vote the same (except as to the election of Directors) *as directed by Columbia Oil.* Separation of Columbia Oil and Panhandle Eastern by the eventual sale

or other disposition of the stock was not required. The principal "terms and conditions" with respect to voting as stated in the decree are as follows (the "beneficial owner" being the defendant Columbia Oil):

> (a) To vote said stock for the election of as many directors of Panhandle Eastern as the number of shares thereof may be entitled to elect; Provided, that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recommended by the beneficial owner of said stock, in conference and with the advice of the trustee, * * *;
>
> (b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree (R. 146-147).

The main ostensible object of the decree was to free Panhandle Eastern and enable it to extend its pipe line into the Indiana-Ohio-Michigan area. The decree, therefore, in addition to comprehensive but general injunctive provisions, specifically prohibited any interference with the company in financing such an extension. With reference to any possible financing received from Columbia Gas, the decree stated that it might be furnished—

> only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment (R., 148).

And to make assurance doubly sure that this particular prohibition should not be evaded, the decree gave Pan-

handle Eastern the right to apply to the court for relief. The decree states in Section IV thereof:

> and in the event that Columbia Gas shall, with respect to any contract or any contractual rights of any kind whatsoever or any property held as security or used in connection with any contract, in any way prevent the free transportation, sale, and distribution of gas by Panhandle Eastern, then upon application to this Court or any court of competent jurisdiction Panhandle Eastern shall have the right (1) to the immediate appointment of a trustee to hold such contract rights or property subject to the purposes and provisions of this decree; (2) to immediate specific performance of any and all contracts with Columbia Gas; and (3) to immediate injunction, both temporary and final, as well as any other appropriate remedy at law or in equity, including any remedy hereunder (R. 148-149).

and further in Section V thereof

> that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof (R. 149).

It is under the provisions of these Sections of the Consent Decree that the applications were made in the Court below, the denial of which forms the subject matter of these appeals.

5. Allegations of Applications Herein Show that Panhandle Eastern is Entitled to Relief Under Sections IV and V of Consent Decree.

(a) The Panhandle Eastern Application.

Panhandle Eastern had made a contract with the Detroit City Gas Company on August 31st, 1935 to supply natural gas to the City of Detroit for fifteen years (R.

187-218). Performance of the contract necessitated the extension of the Panhandle Eastern pipe line from the end of its existing line at the Indiana border to Detroit (R. 414-415).

The Panhandle Eastern application then alleges:

> X. Because of the existence of said contract, and contemplating the construction of said extension, said Decree filed herein January 29, 1936 (paragraph IV) provided for alternate methods of financing, and further provided that if the Detroit extension and the necessary reinforcements to the main line of Panhandle Eastern were constructed with financial assistance secured from Columbia Gas, such "financial assistance (must be) furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment;"
>
> XI. Notwithstanding said Decree and the further provision therein contained that the defendants were perpetually enjoined from acquiring, directly or indirectly, the whole or any part of the property or assets of Panhandle Eastern, two days after the entry of said Decree, namely, on January 31, 1936, Defendant Columbia Gas, for its own benefit and use, directly acquired from Panhandle Eastern that part of the contract under which Panhandle Eastern owned the right to construct, own and operate the extension from the eastern terminus of the Panhandle Eastern line to the City of Detroit, and by means of its complete control of the Board of Directors of Panhandle Eastern caused the necessary corporate action to be taken to permit such acquisition. Said corporate action was taken before Gano Dunn,

Trustee appointed by and under said Decree herein, had qualified and taken office and was taken at directors' meetings superintended by Charles A. Munroe, one of the defendants herein. Through its wholly owned subsidiary Michigan Gas, Columbia Gas has constructed and now owns and operates said extension, and has received and is now receiving excessive profits therefrom, all in violation of the express provisions of the Decree aforesaid.

XII. By reason of its ownership and operation of said Detroit extension, Columbia Gas has been enabled to take over, dominate and control the markets available to said Detroit extension in Indiana and southeastern Michigan (except the City of Detroit), and to restrain trade and commerce in natural gas by Panhandle Eastern in the said markets and in the Ohio markets of the Columbia companies adjacent to said extension. The map which is hereto annexed and marked Exhibit B (R. 424 B) shows the territory in and about the State of Indiana with the pipe lines of Panhandle Eastern and of the Columbia System as they existed prior to the commencement of this suit. The annexed map which is marked Exhibit C (R. 424 C) shows the same territory and the said lines as they existed on January 29, 1936, the date of the above mentioned Decree herein. The annexed map which is marked Exhibit D (R. 424 D) shows the location of the said Detroit extension together with various laterals therefrom which Columbia Gas has constructed to connect with existing artificial and mixed gas lines which are also shown on said map, such extension of the Columbia System having occurred since the entry of said Decree herein and in order that Columbia Gas might control the markets in the aforesaid territory and enlarge its monopoly so as to include said Indiana and Michigan territory, and to restrain trade and commerce by Panhandle Eastern therein. The City

of Toledo, in the State of Ohio, is twelve miles east of the Detroit extension as shown on said map, and is served by Columbia Gas from its Ohio system. By owning and operating said Detroit extension, Columbia Gas has prevented Panhandle Eastern from competing in the Toledo market, as well as in the other markets in the territory available to said extension, has restrained trade and commerce by Panhandle Eastern therein and has prevented Panhandle Eastern from freely transporting, selling and distributing gas within said territory. Under the terms of a contract between Michigan Gas and Panhandle Eastern, said Gano Dunn as Trustee under said Decree herein, and by the Columbia Gas-dominated Board of Panhandle Eastern, allocation is made of the prices received from the City of Detroit so that an unfair and unreasonable part thereof is paid to and retained by Michigan Gas, all to the detriment of Panhandle Eastern, its stockholders, and the public.

XIII. In addition to the moneys required for the construction of the aforesaid extension, Panhandle Eastern required, for the fulfilment of said Detroit contract, further moneys for the reinforcement of its own line. The above mentioned Decree herein expressly provided that if such financial assistance were procured from Columbia Gas, it must be furnished, as hereinabove set forth, only upon terms which did not (italicizing ours) "in *any* way directly or *indirectly*, presently or *potentially* confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern." Columbia Gas violated said express provision by causing its controlled affiliate, Columbia Oil, to acquire an additional 80,000 shares of the common stock of Panhandle Eastern shortly after the entry of the said Decree with moneys advanced by Columbia Gas, namely, the sum of $2,000,000. which Columbia Gas advanced to Columbia Oil for the express purpose of enabling

the latter to make such payment and to acquire such stock. Said funds when received by Panhandle Eastern were used by it for the said reinforcement of its said line. Such purchase of additional stock gave to Columbia Oil a majority of the common stock of Panhandle Eastern then outstanding, and Columbia Oil still owns such majority, and still owes Columbia Gas said $2,000,000.

While Columbia Oil was and is permitted, under said Decree of this Court, to acquire stock in Panhandle Eastern, such permission was made expressly subject to the further terms of said Decree, including the injunction against acquisition by Columbia Gas of any interest in Panhandle Eastern. The device herein set out was intended to evade the restraint imposed on Columbia Gas by said Decree, and to enable Columbia Gas to acquire an indirect or a potential interest in Stock of Panhandle Eastern having voting rights, and substantial control thereof, all in violation of the express terms of said Decree. At all times since the entry of said Decree the Board of Directors of Panhandle Eastern has been composed of nine persons and since at least the annual meeting of March of 1927, five of said nine have been nominees of Columbia Oil. Said five nominees of Columbia Oil and Gano Dunn, the Trustee aforesaid, have at all times done the bidding of Columbia Oil and Columbia Gas and have at no time taken any steps which would have been for the best interest of Panhandle Eastern if in doing so the interest of Columbia Gas or any of its associates or affiliates would have been injured.

XIV. Columbia Oil was initially organized by Columbia Gas for the purpose of holding certain of the properties and securities of Columbia Gas. The original Board of Directors of Columbia Oil were selected by Columbia Gas and its officers and directors. The management thus put in charge of Colum-

bia Oil by Columbia Gas at its inception has perpetuated itself in control of Columbia Oil at all times since its organization through the solicitation of management proxies and the use of said proxies to continue the same management in office. This has been rendered possible by virtue of the fact that a majority of the stockholders of Columbia Oil are stockholders of Columbia Gas and the officers of Columbia Oil have been stockholders of both Columbia Oil and Columbia Gas practically from the organization of Columbia Oil. At the last Annual stockholders' meeting of Columbia Oil the management proxy committee cast a vote for the same management which consisted of 99.9% of the total votes cast, of which percentage 82.9% in turn represented stock owned and held by persons who were also stockholders of Columbia Gas. The two corporations have at all times been in effect identical in respect of management and control, and have at all times combined and conspired as hereinafter set forth to restrain trade and commerce in natural gas among the States in which Columbia Gas operated and operate directly and through subsidiaries. Through the control which Columbia Gas has at all times had over the business and affairs of Columbia Oil, through the perpetuation of the Columbia Gas management in office and the vote by Columbia Gas stockholders as aforesaid, Columbia Gas has been able to have Columbia Oil join with it in the combination and conspiracy hereinafter set forth and has at all times been able to use Columbia Oil, its officers and directors, as agents and instrumentalities of Columbia Gas in said combination and conspiracy to restrain the sale of natural gas in the territories above mentioned and to aid Columbia Gas to monopolize and attempt to monopolize the trade and commence in natural gas in the territories aforesaid.

XV. The limitations imposed upon the above mentioned Trustee, Gano Dunn, by the provisions of sub-paragraphs (a) and (b) of Section III of the Decree above mentioned and the willingness of the said Gano Dunn to act as the agent and instrumentality of Columbia Gas and Columbia Oil have made it impossible for said Trustee to serve in accordance with the purposes of said Decree as an effective insulator against the control theretofore exercised by Columbia Gas, through Columbia Oil, over Panhandle Eastern and at all times since the entry of said Decree until the present time, Columbia Gas has exercised control and domination through Columbia Oil over Panhandle Eastern in restraint of trade in natural gas in the territories aforesaid and has thereby protected and strengthened its monopoly in the States of Ohio, Michigan, Indiana and adjoining territories.

XVI. In anticipation of further financing of Panhandle Eastern for the reinforcements of its line and the construction of said Detroit extension, Columbia Gas and Columbia Oil, in violation of said Section IV of said Decree, undertook to and did cause to be issued to Columbia Oil the following shares of preferred stock of Panhandle Eastern: (1) 100,000 shares Class A, $6 accumulative and participating preferred stock having a par value of $100. per share, each of said shares having voting rights share for share with the common stock on all matters excepting the election of directors; (2) 10,000 shares of Class B, $6. preferred stock of the par value of $100 per share. This preferred stock is entitled to vote share for share with the common, and in addition thereto is entitled, as a class, to elect. two directors of Panhandle Eastern. Said 10,000 shares was created and issued to Columbia Oil pursuant to the provisions of a settlement agreement entered into between the Columbia Gas and Columbia Oil

and Receivers of Missouri-Kansas Pipe Line Co., a Delaware Corporation, sometimes herein referred to as Mokan. In the negotiations leading up to said settlement agreement, officers of Columbia Gas stated that they would not make a settlement with the Mokan Receivers of claims which said Mokan Receivers then had against the Columbia Gas and Columbia Oil, unless said Mokan Receivers would agree that said issue of Class B preferred stock be created and issued to Columbia Oil and be non-redeemable and non-callable and containing the provision that it should have the right to elect two directors of Panhandle Eastern. Said officers of Columbia Gas on its behalf stated that neither they nor Columbia Gas would agree to any settlement with said Receivers of Mokan unless Columbia Gas and Columbia Oil were given control on the Board of Panhandle Eastern. Said negotiations were had and said statement made after the entry of said Decree aforesaid and were directly contrary to the terms and provisions of said Decree.

The prayers of the application are as follows:

(1) That an order be entered herein allowing it to file this application and be made a party for the limited purpose of enforcing the rights conferred by Section IV of the consent decree entered herein on January 29, 1936, as is provided by Section V of said Consent Decree.

(2) That a trustee be appointed to hold all the stock of Michigan Gas and all interest of Columbia Gas in said Company, and that Columbia Gas be ordered to turn over such stock and interests to such trustee to be held by him for the benefit of the Panhandle Eastern, subject only to repayment to Columbia Gas of sums actually advanced by it for the purpose of construction of the aforesaid pipe line, less any dividends and all other moneys received

directly or indirectly by Columbia Gas from profits made by said Michigan Gas and provided any balance due to Columbia Gas shall be a first charge on the assets and earnings of the trust estate.

(3) That the trustee herein, Gano Dunn, be directed forthwith to deliver up and surrender to Panhandle Eastern 80,000 shares of its capital stock received as mentioned in paragraph XIII herein, and that the defendants Columbia Oil and Columbia Gas be directed to receive in lieu thereof a security which does not in any way directly or indirectly, presently or potentially, confer on Columbia Gas any voting rights, control or participation in the management of, Panhandle Eastern.

(4) That said trustee, Gano Dunn, be directed to vote the common stock and the 100,000 shares of Class A preferred stock and the 10,000 shares of Class B preferred stock of Panhandle Eastern so that the provisions of such preferred stock may be suitably amended to eliminate any and all right of the holders thereof to vote on any matter whatever, including the election of directors.

(5) For such other and further relief as to the Court may seem appropriate under the provisions of said Section IV of said Decree.

The Panhandle Eastern application is signed by Arthur G. Logan and Logan & Duffy as attorneys for the corporation. In Paragraph XX of said application the following is stated:

XX. That annexed hereto and marked Exhibit E (R. 425) is a copy of certain resolutions duly adopted at the Annual Meeting of Stockholders of Panhandle Eastern duly called and held on the 11th day of March, A. D. 1940 under the provisions of which this application is made. Said resolutions were proposed at said meeting and after being seconded, received

the affirmative vote of persons and proxies at said meeting representing 373,600 shares of the common stock of Panhandle Eastern. All stockholders and proxies present at such meeting voted for said resolutions, except the management proxy, who represented 5,380 shares, and Harold B. Howard, proxy for 109 shares, neither of whom voted on the resolutions, and Gano Dunn, the Trustee for Columbia Oil under the terms and conditions of the Consent Decree entered herein on January 29, 1936, who sought to vote against the resolutions, which vote by the said Gano Dunn was, however, improperly and illegally cast.

That said letter of January 15, 1940 referred to in said resolutions demands inter-alia that Panhandle Eastern:

"4. Intervene in the proceedings pending in the United States District Court for the District of Delaware as provided in Paragraph V of the decree of said court entered on January 29, 1936 and request that the Columbia companies be held in contempt by virtue of their violations of Paragraph IV of said decree and pray that the Columbia companies be required to sell to Panhandle Eastern all the stock of Michigan Gas Transmission corporation for the total investment of said companies in said corporation less dividends and all other monies received, directly or indirectly, by Columbia Gas & Electric Corporation from profits made by said Michigan Gas Transmission Corporation by virtue of the contract of March 17, 1936" (R. 423).

The record contains a complete transcript of the proceedings held at the annual meeting of Panhandle Eastern on March 11, 1939 (R. 428-487), the pertinent part of which, relating to the resolution mentioned in Paragraph XX of the application above, is found on pages 461 to 463.

Other parts of the minutes of said annual meeting should be considered in order to fully understand the voting instructions given to Gano Dunn by Columbia Oil. We will discuss these hereinafter. We merely point out now that at the time Mr. Dunn voted to defeat the resolution the following took place:

> Mr. Logan: Mr. Dunn, may I ask if you were directed by Columbia Oil & Gasoline Corporation to vote against that resolution?
>
> Mr. Dunn: I don't recognize your right to ask the question.
>
> Mr. Hand: May I have noted or the record that I object to the vote of Mr. Dunn unless in compliance with his Trust and evidence of compliance with his Trust be shown here. By that I mean, some evidence to show us that he is acting in accordance with the wishes of his principal when he votes as he does on this question.
>
> Mr. Logan: I must point out at this time that this motion is one for this corporation to bring law suits against Columbia Oil & Gasoline Corporation. Mr. Dunn has no right to vote on that motion unless he is directed by Columbia Oil & Gasoline Corporation. If he is voting because he was directed by Columbia Oil & Gasoline Corporation to vote against it, this corporation should not receive his vote. If he was not, he has no right to vote, and I demand that the Chair reject his vote and declare the resolutions adopted.
>
> The Chairman: The Chair declares that the resolution was lost (R. 462).

Upon an appeal from this ruling, the Chair held that it had been sustained by the vote of Mr. Dunn (R. 463).

(i) Motions to Dismiss Panhandle Eastern Application filed by Columbia Gas and Columbia Oil.

Columbia Gas filed a motion to dismiss the application of Panhandle Eastern on the ground that the application was not signed or verified by Panhandle Eastern and that the attorneys whose names appeared thereon were not attorneys for Panhandle Eastern and were not authorized to act on its behalf (R. 426).

Columbia Oil filed a motion to dismiss the application of Panhandle Eastern on the ground that said application was not authorized by Panhandle Eastern; that the attorneys whose names appeared on said application were not authorized by that Company to act on its behalf and that Gano Dunn as Trustee of the Columbia Oil stock duly voted the Columbia Oil stock to defeat a resolution, introduced at the annual stockholders' meeting of Panhandle Eastern on March 11, 1940, that Panhandle Eastern should make this application and that he voted said stock in accordance with the provisions of said consent decree and pursuant to valid directions from Columbia Oil (R. 514-515).

(ii) Ruling on Motion to Dismiss.

The Court below stated that: "The sole question raised by the motion to dismiss is whether Panhandle Eastern has made a 'proper application' to become a party to this suit" (R. 520). The Court then reviewed proceedings had at the annual meeting of stockholders of Panhandle Eastern on March 11, 1940, at which time a resolution was introduced as aforesaid to have Panhandle Eastern make the instant application. The Court below ruled that the resolution had been defeated by the vote of the Columbia stock standing in the name of Gano Dunn as Trustee and

the Court said that Gano Dunn had "duly voted the shares of stock of Panhandle Eastern * * * in accordance with provisions of said consent decree, and pursuant to valid directions from Columbia Oil" (R. 526).

(b) The Mokan Application.

After the Court below ruled that the Panhandle Eastern application was unauthorized, Mokan filed an application in its derivative capacity on behalf of Panhandle Eastern. This application was filed on April 16, 1940 (R. 526-541). This application is almost identical with the Panhandle Eastern one aforesaid, except that it is in a derivative capacity rather than in a primary one. The prayers seek for Panhandle Eastern the same relief which the Panhandle Eastern application sought. The application sets forth the following allegations in order to show that Missouri-Kansas was entitled to make application in its derivative capacity as a stockholder of Panhandle Eastern:

> XXII. On or about January 15, 1940 and at other times heretofore, Mokan as the owner and holder of 339,275 shares of the common stock of Panhandle Eastern made demand upon Panhandle Eastern and the officers and directors thereof including Gano Dunn above mentiond that this or a like application be made by Panhandle Eastern for relief to which Panhandle Eastern is entitled under Sections IV and V of said Decree, but Panhandle Eastern, its officers and directors, have neglected and refused and still neglect and refuse to take any action whatsoever. The reason Panhandle Eastern, its officers and directors have not taken action is that said Board is controlled by said Gano Dunn and five nominees of Columbia Oil who are acting in concert with Columbia Gas and Columbia Oil to restrain trade in natural gas as aforesaid to the great loss and damage of

Panhandle Eastern. At the annual meeting of stockholders of Panhandle Eastern held on March 11, 1940, resolutions were proposed that Panhandle Eastern take the action which Mokan had demanded on January 15, 1940, including filing an application in its own name as Mokan is doing on its behalf by this application. Said resolutions, after being seconded, received the affirmative vote of persons and proxies totalling 373,600 shares of the common stock of Panhandle Eastern Pipe Line Company. All stockholders and proxies present at such meeting voted for said resolutions, except the management proxy, who represented 5,380 shares, and Harold B. Howard, proxy for 109 shares, neither of whom voted on the resolutions, and Gano Dunn, the Trustee for Columbia Oil under the terms and conditions of the Consent Decree entered herein on January 29, 1936, who voted against the resolutions; whereupon, the Chairman declared that the same had been defeated. The said Gano Dunn so voted pursuant to general instructions from Columbia Oil & Gasoline Corporation.

On April 16, 1940, the day the application was filed, an order was entered directing that a hearing be had on such application on April 23, 1940, and directing that all parties to the cause be served with copies of the application and that at such hearing they appear and show cause why said application should not be granted (R. 541).

The application came on for hearing on April 23, 1940, pursuant to the order aforesaid. After argument, an order was entered denying the application (R. 541-2). The Court rendered no verbal or written opinion.

From the orders denying both applications, these appeals are taken.

Specification of Assigned Errors to Be Urged.

1. With respect to the Application of Panhandle Eastern, appellant relies upon all of the errors assigned by it in its "Assignment of Errors." (R. 576-577).

2. With respect to the Application of Mokan, appellant relies upon all of the errors assigned by it in its "Assignment of Errors" (R. 550-1).

ARGUMENT.

Summary of Argument:

(1) The allegations contained in the applications of Panhandle Eastern and Mokan were denied without any responsive pleadings having been filed thereto and without any trial or hearing on the merits. Said applications state facts legally sufficient to entitle Panhandle Eastern to relief under Sections IV and V of the Decree of January 29, 1936, in that said allegations show that the defendants, Columbia Gas and Columbia Oil have committed the very acts, and accomplished the very purposes which the Decree was designed to prevent. Specifically, the Decree provides that if any financial assistance be secured from Columbia Gas (relating particularly to the Detroit extension and the reinforcing of the Panhandle Eastern line) such assistance must be furnished upon terms which do not, directly or indirectly, presently or potentially, confer upon Columbia Gas voting rights, control or participation in the management of Panhandle Eastern or rights of ownership in the works or properties of Panhandle Eastern other than as security for the investment. The Applications herein allege that Columbia Gas in violation of said Decree has *directly acquired* and now owns the Detroit

extension, and has *indirectly acquired* additional voting securities of Panhandle Eastern.

(2) The application of Panhandle Eastern filed herein for the relief to which it is entitled under Sections IV and V of the Decree, was authorized by that corporation. A resolution proposed at the annual meeting of stockholders of Panhandle Eastern on March 11, 1940 providing for the preparation and filing of such application was duly passed because it was voted by all stockholders other than Gano Dunn, Trustee. The votes cast by the Trustee against said resolution should have been rejected as they were inconsistent with the purposes of the decree; and said Trustee was not qualified to vote upon said resolution, either pursuant to instructions from Columbia Oil or as Trustee, because the resolution proposed an action against Gano Dunn, as trustee, and against Columbia Oil.

(3) In the event the Court below did not err in holding that the Panhandle Eastern application was unauthorized, then the Court below erred in denying the derivative application of Mokan because (1) the allegations of the Mokan application state a cause for relief on behalf of Panhandle Eastern under Sections IV and V of the consent decree; and (2) the allegations of said Mokan application show that Mokan as a minority stockholder of Panhandle Eastern complied with all conditions precedent to the assertion by it of derivative rights in equity, including the right to the relief sought by it for Panhandle Eastern.

POINT I.

The allegations contained in the applications of Panhandle Eastern and Mokan state facts legally sufficient to entitle Panhandle Eastern to relief under Sections IV and V of the decree of January 29, 1936.

We have set forth under the Statement of Facts the principal allegations contained in the Panhandle Eastern application, paragraphs X to XVI, inclusive, which show that Panhandle Eastern is entitled to relief under Sections IV and V of the consent decree. (See *supra*, pp. 12-19, inclusive.) Similar allegations are contained in the Mokan application (R. 530 to 535, inclusive).

No responsive pleading was filed to either application. Motions to dismiss were filed with respect to the Panhandle Eastern application, but said motions were directed solely to the question of whether or not Panhandle Eastern had authorized the filing of the application (R. 426, 514). The motions were supported by affidavits setting forth the proceedings had at the annual meeting of stockholders on March 11, 1940 and the instructions which were said to have been given to Gano Dunn, as trustee, by Columbia Oil. The Court below recognized that the motions did not raise any question concerning the merits of the Panhandle Eastern application both when it stated in the opinion that:

> "The sole question raised by the motion to dismiss is whether Panhandle Eastern has made a 'proper application' to become a party to this suit." (R. 520).

and when it concluded that Gano Dunn had "duly voted the shares of stock of Panhandle Eastern * * * in accordance with provisions of said consent decree, and pursuant to valid directions from Columbia Oil." (R. 526).

Not only were no responsive pleadings filed, but the Court below recognized in making its ruling and in denying the application that no question on the merits of the application was involved. The motions to dismiss the Panhandle Eastern application tested only the sufficiency of the authority by which the application was filed. The motions to dismiss set forth affirmative matters, namely, the proceeding had at the annual meeting of stockholders, and the Court below considered such matters. The motions constituted, therefore, an affirmative defense under Rule 8(c) of the Rules of Civil Procedure for the District Courts. As there was no denial of the allegations concerning the violations of the anti-trust laws or of the acts giving rise to the claim for relief under Sections IV and V of the decree, said allegations, under Rule 8(d), must be considered as having been admitted by the defendants. If not admitted for all purposes, at least said allegations must be considered as admitted for the purposes of this appeal.

The allegations of both applications show facts which clearly entitle Panhandle Eastern to relief under Sections IV and V of the consent decree.

As we have stated in the summary above, the decree provides that if any financial assistance be secured from Columbia Gas (relating principally to the Detroit extension and the reinforcement of the Panhandle Eastern line) such assistance must be furnished upon terms which do not directly or indirectly, presently or potentially, "confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment". The applications state fully and clearly that the defendant Columbia Gas, *since the entry of the consent decree,* has

directly acquired "rights of ownership in the works or properties of Panhandle Eastern" and has *indirectly acquired* additional voting securities of Panhandle Eastern. Under these circumstances, a sufficient showing is made to entitle Panhandle Eastern to the relief prayed for.

POINT II.

The application of Panhandle Eastern filed herein for the relief to which it is entitled under Sections IV and V of the decree was authorized by that Corporation.

The votes cast by Gano Dunn as Trustee should have been rejected.

The final clause of the consent decree is under Section V and provides:

> "That Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

The decree must be construed in such a way that under appropriate circumstances the above quoted clause could have some effect.

The purpose of Section IV was to extend to Panhandle Eastern the protection of the basic principle of non-interference in connection with the Detroit contract, and especially in the reinforcement of the existing line and the construction, ownership and operation of the new Detroit extension. Section IV strongly fortified that principle by giving Panhandle Eastern the means of self-protection in this regard.

Against whom could Panhandle Eastern possibly enforce "the rights conferred by Section IV hereof"?

An examination of Section IV shows that the only rights therein conferred are against the defendants in the anti-trust suit, the principal of whom are Columbia Gas and Columbia Oil. Therefore, the right to enforce, which was provided for Panhandle Eastern in Section V, must have been intended as a right against Columbia Gas and Columbia Oil. The application of Panhandle Eastern now before this Court was denied by the Court below on motions of Columbia Gas and Columbia Oil with the statement by the Court that "the sole question raised by the motion to dismiss is whether Panhandle Eastern has made a 'proper application' to become a party to this suit". Whether the application was a proper one depends upon whether the stockholders of Panhandle Eastern at the annual meeting on March 11, 1940, by resolution, authorized certain attorneys to make the application on its behalf. Whether such resolution was adopted by the stockholders at said meeting depends on whether it could be defeated by the vote of Gano Dunn, trustee (holder of record of a majority of Panhandle Eastern voting shares) voting pursuant to instructions of Columbia Oil.

If the provision of the consent decree, Section III (b), is construed to permit Columbia Oil to defeat, by instructing a voting trustee to vote against, a resolution directing intervention pursuant to the above quoted clause in Section V, then that clause of Section V must be a nullity, since it could not possibly be directed against any other than Columbia Oil and its affiliate, Columbia Gas.

Since that would not be a reasonable construction, it must follow that Section III (b) is subject to some limitation, and that limitation is found in Section III (a) which provides for the vote by the trustee of the trusteed stock

for the election of directors, and makes such voting "subject, however, in this as well as in the exercise of all other powers to the authority of this Court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder." The very purpose of the stockholders' resolution was to bring before the Court a question of the sound discretion and good faith of the trustee. Surely the trustee had no right to vote on a resolution impugning his own sound discretion and good faith; and still less could he do so on direction of the beneficial owner of this stock, the very party against whom relief is sought by the resolution!

Whether or not Panhandle Eastern is entitled to the relief sought is not yet at issue; the sole question is whether under any conceivable circumstances it can assert the right Section V seems to give it, to become a party to the suit. If the only possible parties against whom relief could be sought can prevent intervention of Panhandle Eastern by directing the negative vote of a controlling block of stock, in violation of the express injunction of the decree, and then have that vote sustained on motion of the same offending parties, it must follow that there is no circumstance under which the quoted clause from Section V could possibly operate.

Furthermore, the fiduciary position occupied by Columbia Oil as the equitable owner and Gano Dunn as the legal owner of the majority stock of Panhandle Eastern should require a court of equity to bar them from using that position to prevent the corporation from asserting rights against them. *Pepper* v. *Litton*, 308 U. S. 295.

POINT III.

If the application of Panhandle Eastern was not authorized then the application of Mokan should have been entertained by the Court below.

After the court below had denied the application filed in the name of Panhandle Eastern on the ground that it had not been authorized by that corporation, Mokan filed a similar application as a stockholder of Panhandle Eastern in a derivative capacity. The application states that Mokan sought to have Panhandle Eastern, its directors and stockholders make the application, but they had wrongfully neglected and refused to do so (R. 527, 538). See *supra,* pp. 23, 24. Although the defendants objected to the application at the hearing, no objections in the form of written pleadings were filed. The application was peremptorily denied at the close of the hearing. No verbal or written statement of reasons was made by the court.

The proceeding below, in which the application was made, is one in equity. The consent decree is one entered by a Court of Equity.

A decree in equity is to be construed in accordance with the general principles of equitable jurisprudence. It is a corollary of this rule that a decree, being an act in the exercise of the equitable jurisdiction, is to be construed to contemplate and authorize the use of all the actions, forms and modes of relief and procedure established by the principles of equity, and which may be necessary and appropriate for its effectual administration. Such a construction should be applied to Sections IV and V of the decree which give Panhandle Eastern the right to relief. Indeed, the following statement of that right in the decree strongly supports that construction:

> Upon *application to this court* or any court of competent jurisdiction Panhandle Eastern shall have the right (1) to the immediate appointment of a trustee to hold such contract rights or property subject to the purposes and provisions of this decree; (2) to immediate specific performance of any and all contracts with Columbia Gas; and (3) to immediate injunction, both temporary and final, as well as *any other appropriate remedy at law or in equity*, including any remedy hereunder (R. 149).

The application by Mokan is an application to the Court for an appropriate remedy in equity, which is thus specifically mentioned in the decree.

Under general rules of equity a stockholders' suit by Mokan in behalf of Panhandle Eastern, *outside of the decree*, would lie. Mokan's derivative application is an equally appropriate procedure to make use of the right of Panhandle Eastern *under* the decree.

Under general principles of equity (which are incorporated in the decree), Mokan may act for Panhandle Eastern in procuring relief under the decree, because the defendant, Columbia Oil, owns and controls the majority of the Panhandle Eastern shares and it names and controls a majority of the Panhandle Eastern directors. The defendants, including Columbia Oil, are charged in the application with engaging in unlawful and wrongful acts and transactions in respect of the affairs and business and interstate trade and commerce of Panhandle Eastern. The interest of the defendants is in conflict with the interest of Panhandle Eastern and of the minority stockholders, they are acting in a manner injurious to Panhandle Eastern and the rights of other shareholders, and they have refused to cause Panhandle Eastern to make a direct application.

Pepper vs. *Litton*, 308 U. S 295, 84 L. ed. 281 (Dec. 1939) 306-307:

> "A director is a fiduciary. *Twin-Lick Oil Compdny* vs. *Marbury*, 91 U. S. 587, 588. So is a dominant or controlling stockholder or group of stockholders. *Southern P. Company* vs. *Bogert*, 250 U. S. 483, 492. Their powers are powers in trust. See *Jackson* vs. *Ludeling*, 21 Wall, 616, 624. Their dealings with the corporation are subjected to rigorous scrutiny and where any of their contracts or engagements with the corporation is challenged the burden is on the director or stockholder not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein. *Geddes* vs. *Anaconda Copper Min. Company*, 254 U. S. 590, 599. * * * normally that fiduciary obligation is enforceable directly by the corporation, or through a stockholder's derivative action."

The trustee is likewise a fiduciary. That is the precise and preeminent status in which he is placed by, and which is necessary to accomplish the object of, the decree. Acts which constituted a violation by the defendants of a fiduciary duty to Mokan constitute the main reason for his appointment.

When, as here, the officers, directors and majority stockholder are unable or unwilling to act, the corporation cannot act, and Courts of Equity permit minority stockholders to sue for the protection of the corporation in which they have an interest.

Ashwander vs. *Tennessee Valley Authority*, 297 U. S. 288, 80 L. ed. 688;

Flynn vs. *Brooklyn R. Co.*, 158 N. Y. 493, 53 N. E. 520;

Brinkerhoff vs. *Bostwick*, 88 N. Y. 52;
Hawes vs. *Water Works*, 104 U. S. 450;
Delaware & Hudson Co. vs. *Albany & Susquehanna Co.*, 213 U. S. 435, 451;
United Copper Securities Co. vs. *Amalgamated Copper Co.*, 244 U. S. 261;
Carter vs. *Carter Coal Co.*, 298 U. S. 238;
Hyams vs. *Calumet & Hecla Mining Co.*, 221 Fed. 529;
Thompson, Corporations, 3d ed., secs. 4560-4566;
Druckerman v. *Harbold*, 174 N. Y. Misc. 1077, at 1078;
Eshleman v. *Keenan*, 194 Atl. 40 and 2 Atl. (2d) 904;
Ainscow v. *Sanitary Co. of America*, 180 Atl. 614;
Fleer v. *Frank H. Fleer Corp.*, 14 Del. Ch. 277, 125 Atl. 411;
Sohland v. *Baker*, 15 Del. Ch. 431, 141 Atl. 277.

The broad scope of the decision of this Court in the case of *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 80 Law Ed. 688, indicates that Mokan's application in a derivative capacity, in the event Panhandle Eastern was prevented from proceeding through the negative vote of Gano Dunn, should have been granted. Gano Dunn, both in his capacity as majority stockholder and as the one who had control over a majority of the board of directors through his appointive powers under the consent decree, was not willing to have Panhandle Eastern assert or test its right to relief under Sections IV and V of the decree. If Dunn is sustained, then the fact that he would not let the corporation assert its rights, gave Mokan, a minority

stockholder, a right to apply for the relief. In the *Ashwander* case, this court pointed out that where directors were "reluctant to decide constitutional questions" and thus bar a test of rights of the corporation (similar to the bar set up by Gano Dunn to prevent Panhandle Eastern from testing its rights) a minority stockholder should be given "the opportunity to resort to equity, in the absence of an adequate legal remedy, in order to prevent illegal transactions by those in control of corporate properties" and this court pointed out that such right in the minority stockholders "should not be curtailed because of reluctance" of those in control to have the right asserted.

Delaware & Hudson Co. vs. *Albany & Susquehanna Co.*, 213 U. S. 435, 451:

> "The situation was unique. The company whose interest it was to assert the right of payment and to demand it was under the control or could be influenced by the company whose interest it was to deny indebtedness and resist payment. And though there are allegations in the bill of contrary import, the good faith of the directors need not be questioned. They might, notwithstanding, be firm in their views, —firm to resist appeals against them. Their views seemed to persist through many years. At any rate, a situation was presented fully as formidable to the interest of stockholders in the Susquehanna Company as that presented in the Harrington Case. And it may be well doubted whether the directors of the Susquehanna Company, so being directors of the Delaware Company, and who, either from an apathy that endured through many years, could discern no right in that company to assert, or, through conviction of the absence of right, were the best agents to begin or conduct a litigation of such right. It was certainly natural enough that a stockholder should seek more earnest representatives, and consider that

the directors 'occupied', to use the language of *Dodge* vs. *Woolsey*, 'antagonistic grounds in respect to the controversy' as to him. The attitude of the directors need not be sinister. It was so in *Chicago* vs. *Mills*, 204 U. S. 321, and *Ex parte Young*, 209 U. S. 123, and other cases."

Hyams vs. *Calumet & Hecla Mining Co.*, 221 Fed. 529 (C. C. A. 6, 1915):

"The *Bigelow* case does not, however, decide that a court of equity could not, and should not, give appropriate relief, for the protection of the interests of minority stockholders, on proof of a purpose on the part of the controlling corporation to absolutely dominate the controlled company, and the existence of a substantial conflict of interest between such companies, accompanied by an actual attempt to accomplish a prejudicial domination. On the other hand, the rule, independently of state or national anti-trust statutes, is fundamental that one in control of a majority of the stock and of the board of directors of a corporation occupies a fiduciary relation towards the minority interests. Every act in its own interest to the detriment of the holders of minority stock becomes a breach of duty and of trust, and entitled to plenary relief from a court of equity. *Jackson* vs. *Ludeling*, 88 U. S. (21 Wall.) 616, 624, 625; *Jones* vs. *Electric Co.* (C. C. A. 8), 144 Fed. at page 771; *Wheeler* vs. *Abilene etc. Bldg. Co.* (C. C. A. 8), 159 Fed. 391, 394 395; 3 *Clark & Marshall on Corporations*, at page 2289 (p. 537).

* * * * * *

The bills allege lack of collusion, and the record negatives its existence. The suit, if successful, would be detrimental to the interests of the majority of the directors of the Isle Royale and Tamarack, in their capacities as directors and stockholders in the

> Calumet & Hecla, and the latter company practically held sufficient voting power to control the stockholders' meetings of both the Tamarack and Isle Royale. Under these circumstances, the prosecution of these suits should not be intrusted to the officers and directors of the Tamarack and Isle Royale; moreover, presumptively any request for such action addressed to either directors or stockholders, would have been unavailing. Such request was therefore unnecessary. *Delaware & Hudson Co.* vs. *Albany, etc., Ry. Co.*, 213 U. S. 435, 446, and following, and cases th re cited; *Rogers* vs. *N. C. & St. L. R. R. Co.* (C. C. A. 6) 91 Fed. at page 307 and following, and page 313'' (pp. 537-538).

In the cases cited above the courts have set forth conditions precedent to the maintenance of a derivative stockholders action in equity, *i. e.*; (1) that the corporation has a cause of action against third parties; (2) that the corporation has not asserted it and (3) that demand has been made on the directors and majority stockholders and they have refused to assert the cause of action. Mokan alleges compliance with all of these conditions precedent.

If Columbia Oil, the majority stockholder, can use its control to prevent direct action by Panhandle Eastern, the right given to Panhandle Eastern by the decree is a nullity unless it is available to Mokan in a derivative capacity.

Conclusion.

Either the decree denying the application of Panhandle Eastern should be reversed or, if affirmed, then the decree denying the application of Mokan should be reversed. In either event, this Court should direct the Court below to entertain the appropriate application and grant to the applicant as a party a hearing on the merits of the claim to relief.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 268.

MISSOURI-KANSAS PIPE LINE COMPANY,
Appellant,

v.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, *et al.*

No. 269.

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,

v.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, *et al.*

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 268

MISSOURI-KANSAS PIPE LINE COMPANY,
Appellant,

v.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, *et al.*

No. 269

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,

v.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, *et al.*

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

REPLY BRIEF OF APPELLANTS.

Statement.

The present applications are not motions to intervene under the intervention rule. The right to procure the relief sought in these applications exists independently of that

rule. They are based on the language contained in Section V of the Consent Decree of January 29, 1936 as follows:

> "* * * that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

This provision relieves the applicants from the requirements of Rule 24 concerning interventions and gives to Panhandle Eastern an absolute right to become a party for a limited purpose.

PART I.

Reply to Appellees' Briefs in Appeal No. 269.

Reply to Brief of Appellee Columbia Oil & Gasoline Corporation in Appeal No. 269.

I. Reply to Point I.

We take no exception to Point I of Columbia Oil relating to the manner of raising the question of the authority of the attorneys to represent Panhandle Eastern. We are willing that this question should be determined on the motions of Columbia Oil and Columbia Gas.

II. Reply to Point II.

Columbia Oil contends that the order could not be final because it relates only to the authority of attorneys to bring the application, and, therefore, could not foreclose Panhandle Eastern from subsequently authorizing a similar application.

This disregards the fact that the order was based on the finding that the vote of Dunn alone could defeat a resolution to authorize any attorneys to bring any application at any time. Dunn's vote was based upon the decision that

no application should be made by these or any other attorneys and that no relief should be sought under the Decree or in an independent action outside of that case. If Dunn alone, voting on instructions of Columbia Oil, a party against whom the proposed action could be taken, can prevent the application, then there is, to all intents and purposes, a final order which disposes forever of the practical possibility of bringing such an application. To ask this Court to believe that Panhandle Eastern enjoys any vestige of free will or volition to bring an adversary proceeding against Columbia Oil while the latter has power to direct and control the vote of the trustee, is to put an impossible strain on credulity.

Even in intervention cases the rule is that under such circumstances the order is final.

> "* * * The right to review this order, therefore, rests on the inquiry whether it constitutes a final order or decree, within the meaning of the latter proviso and the general rule is well settled that a denial of the right to intervene is not such final decision, and not appealable. Ex parte Cutting, 94 U. S. 14, 22, 24 L. Ed. 49; Guion *v.* Insurance Co., 109 U. S. 173, 3 Sup. Ct. 108, 27 L. Ed. 895; Credits Commutation Co. *v.* U. S., 177 U. S. 311, 317, 20 Sup. Ct. 636, 44 L. Ed. 782; Id., 62 U. S. App. 728, 732, 34 C. C. A. 12, 91 Fed. 570, 572; Buel *v.* Trust Co., 44 C. C. A. 213, 104 Fed. 839; 1 Fost. Fed. Prac. (3d Ed.) 445. *A just exception to this rule arises,* as intimated in the Credits Commutation Case, supra, '*where the denial* of a third party to intervene therein *would be a practical denial of certain relief to which the intervener is fairly entitled, and which he can only obtain by intervention,* and where the intervention is not discretionary with the chancellor'; or, as stated in 1 Fost. Fed. Prac., supra, 'where a denial of the right to intervene would be

a practical denial of all the relief to the petitioner perhaps an appeal will lie from an order denying intervention'. But the authorities are uniform in upholding the rule, without regard to advantages which may accrue through the intervention, *provided relief upon the intervener's claim is not foreclosed by the denial.*" (Italics ours.)

In re Columbia Real Estate Co., 112 F. 643, 645 (C. C. A. 7th).

In *State of Washington* v. *United States*, 87 F. (2d) 421, 433 (C. C. A. 9th), the Court said:

"With exceptions not here pertinent, an appeal to this court can be taken only from a *final* decision of the District Court. 28 U. S. C. A. §225. Although the cases generally state various tests to ascertain whether or not an order denying intervention is appealable, the primary question is: Is the order denying intervention a final decision?

"The test ordinarily applied to determine whether an order is final is that an order is final if it will 'terminate the litigation between the parties on the merits of the case, so that if there should be an affirmance here, the court below would have nothing to do but to execute the judgment or decree it had already rendered'. Bostwick *v.* Brinkerhoff, 106 U. S. 3, 1 S. Ct. 15, 16, 27 L. Ed. 73. As applied to a controversy between parties to the suit and parties attempting to intervene, this simply means that if the order denying intervention terminates the litigation of the question sought to be litigated between such parties, then the order is final and appealable,* under the express terms of the statute. On the other hand, if the litigation of the question sought to be litigated is not terminated, then the order is not ap-

* Complete annotation of all cases on point set forth in note 18 in the opinion.

pealable,* because the order does not 'terminate the litigation between the parties on the merits of the case.'

"Ordinarily, the denial of the petition adjudicates nothing but the right to intervene, and has no force as *res judicata* on the merits. Such a denial 'leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding.' In other words, the petitioner in an independent proceeding of some kind may litigate the same question which he seeks to litigate by intervention. If there is any 'other appropriate form of proceeding' open to the intervener, the order denying intervention is not final, and therefore not appealable, because the order does not 'terminate the litigation between the parties on the merits of the case.'

"However, it sometimes appears that the interveners have no remedy to litigate their question, except by intervening in an existing action or suit. In such cases, unless the interveners are permitted to litigate their questions in the pending litigation, their rights, whatever they may be, will be entirely lost, for they have no remedy by which such rights may be protected or adjudicated. An order denying such parties leave to intervene is, as this court stated in its first decision touching the question 'a practical denial of all relief to the petitioner.' Therefore such an order is final and appealable."

See also

United States v. *Radice*, 40 F. (2d) 445 (C. C. A. 2d);

United States v. *Philips, Judge*, 107 F. 824 (C. C. A. 8th);

United States Trust Co. v. *Chicago Terminal T. R. Co.*, 188 F. 292, 296 (C. C. A. 7th).

* Complete annotation of all cases on point set forth in note 19 in the opinion.

III. Reply to Point III.

Columbia Oil contends that the court below was correct in dismissing the intervention application in the name of Panhandle Eastern Pipe Line Company because it was not authorized by the Company, and the attorneys making said application and prosecuting this appeal have not been authorized to act in its behalf. This depends on the validity of Dunn's vote, which was the only vote cast against the resolution authorizing the application and the employment of the attorneys (R. 462).

We do not press the contention made at the stockholders' meeting that the Consent Decree required Dunn to have specific instructions from the beneficial owner of the stock with respect to each vote. It nevertheless remains clear that, except in the single contingency where the trustee believes the instructions to be inconsistent with the purposes of the decree, he can vote only pursuant to directions from the beneficial owner. The terms of the Consent Decree confine his discretion to the single question of whether any specific instruction is contrary to the purposes of the decree. Whatever further right the trustee might have to vote must be conferred by instructions from the beneficial owner. Any such general instructions giving discretion to the trustee surely could not validate a vote which would not be valid if cast pursuant to a specific instruction; and certainly a specific instruction could not be given by Columbia Oil to vote its shares in opposition to a motion to bring a proceeding against Columbia Oil itself for the purpose of enforcing the express provisions of the Consent Decree. Even if the trustee had been specifically instructed so to vote, he should have found that the instruction was contrary to the intent and purpose of the Consent Decree itself.

The attempted inference of Columbia Oil's brief in Appeal #269 (pp. 12, 19) that Dunn's vote against the resolution to authorize this action was held valid by the Chancery Court of Delaware is unjustified and unfair. An examination of the Chancellor's Decree and letter commencing at page 37 and page 39 of the same brief shows that he dealt only with the election of corporate officers and directors, which could not involve any question as to whether opposition to the proposed authorization of legal action was inconsistent with the purpose of the Consent Decree. The validity of Dunn's vote on that question was not in issue or even considered.

Reply to Brief of Appellee Columbia Gas & Electric Company in Appeal No. 269.

I. Reply to Point I.

As stated before, we take no exception to raising the question of the authority to represent Panhandle Eastern by the motions.

II. Reply to Point II.

Under Point II appellee, Columbia Gas, takes the position "that the directors of a corporation are the only persons who can institute an action on behalf of and in the name of the corporation" (Brief, p. 18).

Columbia Gas does not cite any authorities in support of this statement which it nevertheless states is "well settled." The authorities quoted on page 19 of the brief have nothing to do with this problem as the same are quotations concerning rights of individual stockholders and not the rights of stockholders acting in meeting. The authorities cited on pages 20-24, inclusive, are likewise cases which have nothing to do with the instant problem as the same define the rights of individual stockholders either suing in

their own capacities or in derivative capacities. However, these derivative cases do clearly show that a resolution passed at an annual stockholders' meeting directing a corporation to sue supersedes any discretion in directors, because one of the conditions precedent to a successful derivative suit is that demand to sue be made on the stockholders.

In *United Copper Securities Co.* vs. *Amalgamated Copper Co.*, 244 U. S. 261, 263-264, this Court pointed out:

> "Whether or not a corporation shall seek to enforce in the courts a cause of action for damages is, like other business questions, ordinarily a matter of internal management and *is left to the discretion of the directors, in the absence of instruction by vote of the stockholders.* Courts interfere seldom to control such discretion *intra vires* the corporation, except where the directors are guilty of misconduct equivalent to a breach of trust, or where they stand in a dual relation which prevents an unprejudiced exercise of judgment; and, as a rule, *only after application to the stockholders,* * * *. * * * No application appears to have been made to the stockholders as a body. * * *." (Italics ours.)

Apparently Columbia Gas is confused concerning the true nature of the authority under which the application was filed by Panhandle Eastern. At the annual meeting of stockholders of Panhandle Eastern, on March 11, 1940, a resolution was proposed authorizing the filing of the instant application. The question of whether or not it was passed is treated in our main brief, and elsewhere herein, pages 6 and 7. If the resolution was properly passed, then the application herein was one made by Panhandle Eastern under and by virtue of the resolution adopted at the annual meeting of stockholders. If the resolution was

not adopted, then, of course, the instant application was not properly filed. The question has nothing to do with derivative actions nor with stockholders acting in their individual capacities.

Section 2, paragraph 2, of the Delaware Corporation Law, authorizes Delaware corporations: "to sue and be sued, complain and defend in any court of law or equity."

Section 3 of the Delaware Corporation Law places this power in the stockholders. Section 3, which allows additional powers to corporations provides: "In addition to the powers enumerated in the second section of this Chapter, every corporation, its officers, directors and stockholders, shall possess and exercise all the powers and privileges" etc.

In other words, the power contained in section 2, paragraph 2, "to sue" is placed in the corporation, its officers, directors and stockholders. The by-laws of Panhandle Eastern, under which the respective rights of officers, directors and stockholders are set forth, do not specifically state whether the right to exercise the power "to sue" shall be in the directors or stockholders, but instead, in Article 13, provide generally as follows:

> "13. The Board of Directors *may* exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation, or by these By-Laws, directed or required to be exercised or done by the stockholders" (Record, 491).

From this we find that the stockholders conferred permission upon the directors to exercise the power to sue but in doing so did not abrogate the right themselves to exercise such power, as the right is merely that the directors "may exercise" this power. The delegation of this

power, being a permissive one, did not curtail the st
holders' own power to exercise it.

In the case of *Rogers* vs. *Hill*, 289 U. S. 582, 77 L.
1385, a statute provided that the stockholders "may"
fer upon directors the power to make and alter the by-l
This was done. Subsequently, at an annual meeting,
stockholders themselves adopted a new by-law. This C
said at pages 588-589:

> "* * * But plaintiff argues that the stockhol
> having delegated to the directors authority to a
> by-laws lost the power to adopt the one in ques
> That is inconsistent with the purpose of the sta
> Power to prescribe rules for the government of b
> ness corporations reasonably is deemed an inci
> *of ownership and the voting power of the shares*
> is quite generally conferred by statute or cha
> provisions upon the stockholders. Here the st
> tory grant to them is plenary. The charter provi
> is subordinate and not inconsistent. There are m
> thousand holders of shares of this corporation. T
> annual meetings are the only regular ones, but
> directors meet frequently. The company's busi
> is extensive and complex and considerations of
> venience may have suggested delegation to direc
> of authority to make and alter by-laws.
>
> That the statute did not intend to divest st
> holders is clear for it expressly makes by-laws pa
> by directors subject to alteration and repeal by
> stockholders. *In the absence of statutory provi*
> *definitely and clearly disclosing that intentio*
> charter provision or *by-law adopted by incorpora*
> *or shareholders delegating power to directors*
> *not reasonably be held to take from the stockhol*
> *any of the power conferred upon them by the sta*
> Plaintiff's contention would leave the stockhol
> full power to alter and repeal by-laws made by di
> tors but would deny them power to originate or a

> any by-law or to amend or repeal those made by themselves. We find no reason in support of that construction. Moreover, it seems in direct conflict with the decision of the highest court of New Jersey. In the case of Re A. A. Griffing Iron Co., 63 N. J. L. 168, 41 Atl. 931, affirmed in the Court of Errors and Appeals on the opinion below, 63 N. J. L. 357, 46 Atl. 1097, the court declared (p. 171): * * * "That the stockholders had delegated to the directors power to amend the by-laws did not curtail their own power to amend them, and of course the later statute [Revision, 1896] removed all possible restriction on such power. * * *It would be preposterous to leave the real owners of the corporate property at the mercy of their agents, and the law has not done so.'" (Italics ours.)

Columbia Gas apparently does not recognize that the stockholders, assembled in meeting as they were at the annual meeting on March 11, 1940, constitute the corporation itself and that their actions are superior to any action which the directors could take, at least within the field where they have joint jurisdiction, such as in connection with the exercise of the power "to sue," where the by-laws merely provide that the same *may* be exercised by the directors, and where the statute says that the same shall be in directors and stockholders.

In 5 Fletcher Cyc. Corp. (Perm. Ed.), Sec. 2097, pages 337-338, we find the following statement indicating the relative role of stockholders and directors in a matter such as this:

> *"In the absence of a provision to the contrary in the charter of a corporation or the general law, the management and control of the corporation is vested primarily in the stockholders or members collectively, as constituting the corporation, and in them alone.* No one else can act for or bind the corpo-

> ration unless authorized by them, or by the charter or general law; and it is for them to elect or appoint the officers or agents to represent and act for the corporation, and to define their powers, unless there is some charter or statutory provision to the contrary. In other words, if there is no statute nor charter provision vesting control in a board of directors or trustees, then the stockholders retain the right to manage the corporation, although in such a case they may confer by a by-law such power upon the board of directors or trustees. What the stockholders thus exercise is power, the corporate power, granted them as a collective body—the corporation—by the state in the charter; and what the directors or officers exercise is authority given to them by law for the corporation or by it. *In this sense and subject to qualifications hereafter noted, stockholders or members of a corporation represent and may bind the corporation by vote of the majority at a corporate meeting,* * * *" (Italics ours.)

Thus, in the event the Court finds that the vote of Gano Dunn should have been rejected, and accordingly finds that the resolution to authorize the application was passed, the Court should find that the resolution was the act of the corporation and the application was properly filed pursuant to such act, as the stockholders had retained the right to exercise the power "to sue".

III. Reply to Point III.

We repeat here the argument contained in reply to Point III in the brief of Columbia Oil, *supra*, pages 6 and 7.

IV. Reply to Point IV.

We repeat that the proceedings in the Delaware Court of Chancery related only to the election of officers and directors and did not involve any issue or question concerning the resolution to bring the instant application.

Finally, Columbia Gas urges that only a derivative action would raise the question of whether or not the instant resolution passed. A derivative action could only be brought on the theory that the resolution was defeated. We contend it passed. That is the issue on this appeal.

PART II.

Reply to Appellees' Briefs in Appeal No. 268.

Reply to Brief of Columbia Oil & Gasoline Corporation in Appeal Case No. 268.

Statement.

Columbia Oil persists throughout its brief in stating that the instant application in Appeal No. 268, is Mokan's fourth intervention petition. This is a misstatement of the record. Mokan did file two motions seeking leave to intervene which were denied (R. 321, 371). Those were filed by Mokan in its own right.

The instant application is the first and only application that has ever been made by Mokan *in the right of* Panhandle Eastern. The application in Appeal Case No. 269 is not by Mokan.

I. Reply to Point I.

We have set forth, *supra,* pages 3 to 5 inclusive, the authorities showing that when an application to be made a party is denied, the order denying the same is appealable where, as here, there would be a practical denial of certain relief to which the applicant is fairly entitled. This rule is recognized by this Court in the case of *Credits Commutation Co.* v. *U. S.,* 177 U. S. 311. In the recent case of *In re Dolcater,* 106 Fed. 2d, 30, 31, the Court pointed out that an appeal from an application to intervene should be allowed where the "intervention is so essential to the preservation of the petitioner's rights". Applying to our situation the rule recognized by this Court, *supra,* clearly demonstrates the appealability of the decree which denied to Mokan the right to seek, on behalf of Panhandle Eastern, the relief which Section V provides may be obtained in this case. Section IV of the Consent Decree deals with specific rights and Section V states that Panhandle Eastern may, upon proper application, enforce these as a party. How else could Panhandle Eastern enforce these rights? It is obvious that the same rights cannot be appropriately asserted in any other proceeding.

The denial of the application cannot be a discretionary matter because under the terms of the Consent Decree itself the only limitation provided upon the right of Panhandle Eastern to be made a party is that a proper application be made. The words "upon proper application" cannot be interpreted as having the same meaning as "in the Court's discretion". If "proper application" was made, then the Court was without discretion in the matter, as the right was absolute. The denial of this absolute right was a final adjudication.

In the case of *U. S.* v. *Phillips, Judge,* 107 Fed. 824 (C. C. A. 8) the Court said:

> "When a Chancellor denies the right to intervene in a case belonging to the second class (where right to intervene is absolute) an appeal lies because the Chancellor's action was not discretionary, and because such action was a final adjudication in that it denied him relief which he could obtain only by an intervention in the pending cause."

II. Reply to Point II.

We refer to our Statements as to Jurisdiction in No. 268 and No. 269 in reply to this Point II of Appellee and to the statements contained herein, *supra,* pages 2 to 5 with respect to the final nature of the order entered by the District Court.

Columbia Oil takes the position that "Mokan is free to institute *an action for damages* outside of this suit" and that therefore the decree below was not a final one (brief, p. 35). That is not the issue. The decree below is certainly a final determination that Panhandle Eastern shall not be a party to this action for the purposes set out in its prayers. Any relief which might be had outside this case is not the same relief as could be had by Panhandle Eastern as a party to the instant case. In *U. S.* v. *California Cooperative Canneries,* 279 U. S. 533, this court indicated that orders denying intervention to those who have a direct and immediate interest in the *res* which is the subject of the suit are appealable. This Court said at page 556:

> "That Court" (the Court of Appeals of the District of Columbia) "* * * did not refer to the decisions which hold that an order denying leave to intervene is not appealable (Citations), except where he who seeks to intervene has a direct and immediate interest in a *res* which is the subject of the suit (Citations)."

The instant appeal comes directly within the exception specifically recognized by this Court because the *res* "which is the subject" of the suit below is the right of Panhandle Eastern to engage in interstate commerce unmolested by unlawful restraints of these defendants, and the instant application is made in the right of one who "has a direct and immediate interest" in that *res*. Furthermore, the exception hereinabove set forth concerning finality and lack of opportunity to assert rights in other proceedings is so inherent in this matter as to create a sound exception giving rights to an immediate appeal under the Expediting Act to this Court.

III. Reply to Point III.

The doctrine of *res adjudicata* is not applicable and does not estop Mokan from asserting the rights of Panhandle Eastern as it seeks to do herein for the following reasons:

(a) The first Mokan intervention petition was not in the right of Panhandle Eastern. The instant application is. The Mokan motion of February 6, 1939 did not ask that Panhandle Eastern be made a party, nor did the petition annexed thereto, (R. 284) and so the granting of that motion would not have made Panhandle Eastern a party. It follows that the denial of the motion cannot operate as *res adjudicata* against Panhandle Eastern's right under Section V to become a party. Both the order and the opinion of the court below confirm the view that the motion was not in Panhandle Eastern's right.

But appellee's contention would not be helped by admitting that the Mokan motion was intended to make use of such right, for in that case it was subject to the fatal defect of failing to make Panhandle Eastern a party

thereto; and so the denial of that motion was not an adjudication of the merits of Panhandle Eastern's right. Intention is no substitute for necessary allegations or necessary parties.

Nor could the denial of that motion be a final determination even of the right of Mokan to make application derivatively in the right of Panhandle Eastern, since the failure to ask that Panhandle Eastern be made a party was a formal defect sufficient to justify the denial of the motion without prejudice to Mokan's right to present subsequently a proper motion or application.

In order to bring a derivative action on behalf of a corporation it is necessary that the corporation be made a party.

Davenport v. *Dows,* 18 Wall. 626 (1873).

The reason is, as this Court pointed out in the *Davenport* case that the rights asserted by the stockholder are the rights of the corporation and therefore:

> "manifestly the proceedings for this purpose should be so conducted that any decree which shall be made on the merits shall conclude the corporation. This can only be done by making the corporation a party defendant. The relief asked is on behalf of the corporation, not the individual shareholder," etc.

See also:

Cantor vs. *Sachs, et al.,* 18 Del. Ch. 359, 162 Atl. 73;

Ainscow v. *Sanitary Company of America,* (Del. Ch.) 180 Atl. 614.

In other words one of the essentials in order for a judgment to give rise to the doctrine of *res adjudicata* was not

present in the first two petitions to intervene, namely, "the proper parties must be present".

Black on Judgments, Vol. I, Section 242, page 358.

Even if the decree appealed from had sought to pass upon Panhandle Eastern's rights which are herein asserted, the judgment would have been invalid because Panhandle Eastern was not a party, and therefore would not give rise to the doctrine of *res adjudicata.*

Black on Judgments, Vol. I, Section 242, page 358.

Columbia Gas itself originally took the position that the first intervention petition could not have been in the right of Panhandle Eastern. On page 24 of the brief filed by Columbia Gas in opposition to the first motion of Mokan to intervene, the denial of which Columbia Gas now contends has worked an estoppel, Columbia Gas said:

> *"On the Supposition that this petition should be considered as filed by Mokan in the right of Panhandle Eastern."*
>
> "If the petition is considered as filed, not in the right of Mokan, but in the right of Panhandle Eastern, on the analogy of a minority stockholder's bill, it is vitally defective for its failure to comply with certain essentials for the filing of a minority stockholder's bill, namely (1) its absence to show that the directors of Panhandle Eastern were guilty of bad faith and misconduct in refusing to bring suit and (2) its affirmative showing that petitioner was not a stockholder of Panhandle Eastern at the time of the acts complained of and (3) its failure to join Panhandle Eastern as a party defendant."

Columbia Gas then took up the three alleged defects in order and after extensively arguing its points (1) and (2), made the following argument concerning point (3):

> "(3) The petition does not join Panhandle Eastern as a defendant. In a suit in which stockholders sue on behalf of the corporation, it is well settled that the corporation is an indispensable party. It is probably superfluous to cite authorities for such a well-settled proposition, but, from a multitude of those available, we may cite *Davenport* v. *Dows,* 18 Wall. 626.
>
> (Columbia Gas here quotes from several cases.)
>
> "In the instant case, if the petition be construed as brought in the right of Panhandle Eastern, it is consequently fatally defective because of the failure to join the Panhandle Eastern as a party defendant."
>
> (Col. Gas. Brief in Court below, pp. 29-30.)

In the brief of Columbia Oil filed with the District Court at that time, we find the following on page 23:

> "In passing, it should be noted that if Mokan's petition is filed in behalf of itself and for the benefit of Panhandle Eastern on the analogy of a minority stockholders' bill then the petition is vitally defective as it has failed to join Panhandle Eastern as a necessary party defendant.
>
> "*Kelly* v. *Mississippi River Coaling Company,* 175 Fed., 482."

The first petition filed by Mokan to intervene was not in the right of Panhandle Eastern, but if the language contained in Paragraph XXXIII should be construed as an indication that Mokan was seeking to intervene in the right of Panhandle Eastern, the petition was as Columbia Gas then said, "fatally defective because of the failure to join

the Panhandle Eastern as a party defendant". Of course, the doctrine of *res adjudicata* is not applicable in either event.

Mokan is entitled in this derivative application to have the rights asserted by it "measured by the right of the corporation (Panhandle Eastern) to such relief".

> *Arn* vs. *Dunnett,* 93 Fed. (2d) 634 (C. C. A. 10th), certiorari denied 304 U. S. 577;
> *Dickerman* vs. *Northern Trust Co.,* 176 U. S. 181, 44 Law Ed. 423.

(b) The denials by the lower court of Mokan's two earlier motions for leave to intervene were not on the merits. In *Bigelow on Estoppel,* Sixth Edition, Page 65, the author states:

> "* * * a judgment, in order to work an estoppel against another litigation upon the same cause of action, must have been rendered upon the merits of the cause. If the decision was rendered upon a mere motion or a summary application, or if the case was dismissed on some preliminary ground * * * for want of jurisdiction, deficiency in the pleadings * * * or the like, the parties are at liberty to raise the main issue again" etc.

Much of the appellee's brief in this Court is devoted to a comparison of the ultimate substantive facts stated in the several applications, on the theory that there has been a final judgment on the merits. But at no stage have these facts been considered or an adjudication been based upon them. In short, no judgment has been entered upon the merits. The effect of the several orders has been to prevent this by barring entry into that substantive field of controversy. If appellee's theory be correct it is not now

possible for either Mokan or Panhandle Eastern, at any time in any tribunal, to procure any hearing and adjudication upon the merits of the controversy.

IV. Reply to Point IV.

The Government and both Columbia companies stipulated that the Consent Decree be entered and, therefore, are now estopped from urging that the rights conferred on Panhandle Eastern by Sections IV and V cannot be litigated in the suit below. The prayers of the Mokan application state the type of relief Sections IV and V contemplated, but the Court below, if it finds that the prayers go beyond the relief permitted by these Sections, will, of course, limit the relief accordingly.

V. Reply to Point V.

The application does not attack the Consent Decree nor seek to modify the provisions thereof. See *infra*, pp. 32-39.

VI. Reply to Point VI.

Columbia Oil's contention that the relief contemplated by Sections IV and V should be denied under the doctrine of laches is based upon the claim that the cause of action accrued in 1936. The cause of action asserted in the instant application is based upon the continuing use of the properties, as well as upon the acquisition by Columbia Oil of the stock and the acquisition by Columbia Gas of the extension.

In its brief Columbia Oil states, but without any record support: "considerable sums of money have been expended by Columbia Oil in reliance upon these agreements." No suggestion is to be found in the Record that Columbia Oil has suffered any loss whatsoever or has changed its position

since the cause of action arose. Nor is any showing made that any loss will be suffered. On the other hand, the instant application points out that Columbia Gas has secured unconscionable and excessive returns on its investments by virtue of the violations of the terms of the consent decree (R. 531, 535-537). The defense of laches requires not mere lapse of time, but also a change of position to the detriment of the person against whom a right is asserted. In the case of *Bay Newfoundland Co.* v. *Wilson & Co.*, 4 A. 2d. (Del. Ch.) 668 at 671, the Court states the rule:

> "It seems that the equitable rule, with respect to laches, is not ordinarily based on the mere delay of a complainant in asserting his rights, but on delay that works a disadvantage to another, after notice of the invasion of such rights. Chase *v.* Chase, 20 R. I. 202, 37 A. 804; 4 Pom. Eq. Jr. (4th Ed.) p. 3418; Scotton *et al. v.* Wright *et al.*, 13 Del. Ch. 214, 117 A. 131."

See also: *Frank* v. *Wilson and Co.*, 9 A. 2d. 82, 86.

Reply to Brief of Columbia Gas & Electric Corporation in Appeal Case No. 268.

I. Reply to Point I.

The contention of Columbia Gas that the failure "to join Panhandle Eastern as a party is a bar to any proceeding on this application" is untenable. Mokan sought to make the application on behalf of Panhandle Eastern and prayed for "the relief to which Panhandle Eastern is entitled under Sections IV and V of the decree". Mokan recognized that, as it was asserting derivative rights, Panhandle Eastern would have to be made a party to the cause as the rights were being asserted on its behalf

and the judgment would have to be in favor of Panhandle Eastern. *Ainscrow* vs. *Sanitary Co. of America* (Del. Ch.), 180 A. 614; *Canton, et al.* vs. *Sachs, et al.*, 18 (Del. Ch.), 359. 162 A. 73. Recognizing this principle, Mokan in its prayer Number 5 asked that "Panhandle Eastern be cited to appear before the court" (R. 540).

As Mokan asked that an order be entered citing Panhandle Eastern to appear, it complied with all possible requirements. Of course, in an ordinary derivative suit started by a stockholder, parties are named and subpoenas issued, but where, as here, application had to be made to the court to file the application and to bring new parties into the suit, Mokan's prayer that Panhandle Eastern be cited was sufficient. The application was denied, which constituted a denial of the prayer to make Panhandle Eastern a party. That is part of the action which we are asking this court to reverse. Had the court below granted our application and cited Panhandle Eastern to appear, then, of course, it would have been before that court and any decree made on the merits would conclude it as this Court has said must be done. *Davenport* vs. *Dows*, 18 Wall. 626.

II. Reply to Point II.

On pages 2 to 5, *supra*, we have reviewed the reasons and set forth the authorities showing orders such as those entered by the court below are appealable. There we applied the cases to the application filed by Panhandle Eastern. Even more certain is the situation with respect to the instant application filed by Mokan in the right of Panhandle Eastern because the denial, if not reversed, would forever bar Mokan from asserting on behalf of Panhandle Eastern (in the event Panhandle Eastern continues under domination which causes it to refuse to assert its rights), the limited rights to which Panhandle Eastern is entitled

under Sections IV and V of the Consent Decree. As it would be impossible to assert said rights in any other form of proceeding, the denial is appealable, because it constituted "a practical denial of certain relief to which the intervenor (appellant) is fairly entitled and which he can only obtain by intervention". *In re Columbia Real Estate Co.*, 112 F. 643, 645.

The true test of whether or not the instant application should have been granted can only be found in an analysis of the right conferred by Sections IV and V of the Consent Decree. The general rule concerning interventions, Rule 24, does not limit these specific rights set forth in the Consent Decree.

The suggestions contained on pages 30 to 33 inclusive that the application seeks relief broader than that contemplated by Sections IV and V of the Consent Decree is answered merely by pointing out that, if so, the District Court should and will correctly limit the relief. The application contains a prayer for general relief, but within the "limited purpose" permitted by Section V.

III. Reply to Point III.

(a) *Re:* Contention Application is Not Timely.

Under Point III Columbia Gas urges that the application was properly denied because not timely. This contention is based upon language in Rule 24. We have pointed out that Rule 24 does not govern. The argument about timeliness is merely another way of saying that laches constitutes a defense. Nothing is in the record to show that Columbia Gas or Columbia Oil changed position to their disadvantage because this application was not made immediately after Columbia Oil acquired the stock and Columbia Gas acquired the Detroit extension.

On the other hand, as we pointed out in the application (R. 531, 535-537) Columbia Gas has, through its illegal acts and violations of the Consent Decree, obtained property rightfully belonging to Panhandle Eastern, whereby Columbia Gas and Columbia Oil have secured "to themselves a further monopoly in the commerce of natural gas in Indiana, Ohio and Michigan" (R. 536). The application points out that through the March 17, 1936 contract, Columbia Gas was able to control the markets in Indiana, Ohio and Michigan and sell gas "at prices and on terms satisfactory to Columbia Gas" (R. 537).

Through Michigan Gas, Columbia Gas "has received and is now receiving excessive profits therefrom, all in violation of the express provisions of the decree aforesaid" (R. 531). In view of this Columbia Gas cannot urge the defense of laches or untimeliness. *Bay Newfoundland Co.* v. *Wilson & Co.*, 4A. 2d. (Del. Ch.) 668 at 671.

(b) *Re:* Contention Individual May Not Participate in Government Anti-Trust Suit.

It is contended by the appellees that the dismissal of the applications is supported by the following cases, because of the asserted conflict and because of a supposed rule that an individual may not participate in a suit brought under the anti-trust laws by the Attorney General of the United States.

United States v. *Northern Securities Co.*, 128 Fed. 808;

Buckeye Coal & Ry. Co. v. *Hocking Valley Ry.*, 269 U. S. 42.

Ex parte Leaf Tobacco Board of Trade, 222 U. S. 578;

United States v. *Radio Corporation*, 3 F. Supp. 23;

(Brief of Columbia Gas, pp. 39-44; of Columbia Oil, pp. 56-59).

But these cases and some others now referred to show that the applications should have been allowed and that their dismissal was error.

In *United States* v. *Terminal Railroad Assn.*, 236 U. S. 194, parties whose interest was more remote and much less substantial and certain than the interest of these applicants, were permitted to intervene for modification of a decree in an anti-trust case. The interveners were merchants located on the lines of the Terminal Association, for whom the Association performed local transportation service. An objection to intervention by the Attorney General was overruled. This Court said:

> "The challenge by the United States of the right to hear the intervening petitioners is without merit, since even, although the petitioners were not parties, they are entitled to be heard concerning the settlement of the decree in so far as it might operate prejudicially to their rights" (p. 199).

The Court ordered that the decree be so modified as to permit the Terminal Association to serve the interveners.

In *United States* v. *Reading Co.*, 273 Fed. 848, intervention of preferred and common stockholders of a corporation defendant in an anti-trust dissolution case, was permitted by a three judge court. There the question was with regard to the provisions of a decree to dissolve a combination in the anthracite coal trade. The action was approved in *Continental Insurance Co.* v. *United States*, 259 U. S. 156.

The *Terminal Association* case and the *Reading* case recognize the obvious propriety and desirability of permitting the intervention of parties whose property or business interest may be affected by the provisions of an anti-trust decree.

In *Buckeye Coal & Ry. Co.* v. *Hocking Valley Co.*, 269 U. S., 42; 203 Fed. 295; parties whose interest was in mortgage liens upon their lands were permitted to intervene. The intervention was granted, although the relief sought, i.e., the cancellation of the liens, was denied.

(c) and (d) The Application Does Not Seek to Introduce New Issues Nor Attack or Modify the Decree.

Cases like *United States* v. *Radio Corporation*, 3 F. Supp. 23, and *United States* v. *Northern Securities Co.*, 128 Fed. 808, in which intervention was denied to parties who sought to attack anti-trust decrees, to pull them up by the roots, so to speak, do not support a rule against parties who seek the relief specifically provided for by a decree and who seek to procure relief in perfect accord with the anti-trust laws, not in conflict with the existing decree, and whose action if successful will promote the policy of the anti-trust laws to protect the private and public interests affected.

The contentions that the application seeks to introduce new issues and that under settled rules of practice intervention will not be permitted after entry of the decree are answered by the simple fact that the only relief sought is that specifically provided for by the Consent Decree. See *infra*, pages 32-39.

IV. Reply to Point IV.

In its Point IV Columbia Gas seeks to raise the defense of *res adjudicata*. We have pointed out *supra*, pages 16 to 21, that the defense of *res adjudicata* cannot properly be invoked.

PART III.

Reply to Brief of Government.

A. Government's Position.

The reasons given by the Government in its memorandum for its opposition to the relief sought by the instant applications is merely that the litigation pending in the District Court would be protracted. On page 8 the Government points out in a note that:

> "The public interest would probably be served by either plan."

The Government apparently is not certain that even if the Plan considered by the Court below is put into effect it will terminate the illegal control, as we find on pages 7 and 10 the Government saying that *"it is believed"* the Plan will terminate the illegal control. The Court below, although indicating it would approve the Plan, stated in its opinion that the changes are such that the effect will be that "the influence of Columbia Gas over Columbia Oil will be *minimized* or removed."

B. Contention Applications Moot.

The Government contends that the relief sought by the instant applications has become moot because Judge Nields handed down an opinion on January 18, 1941 stating that he would approve the Plan *upon certain conditions being met.* But the conditions, namely, the approval of the Securities & Exchange Commission, and the sale by certain stockholders of their Columbia Oil stock, *may never be met,* and no decree approving the Plan can be entered until they are met. The Court below has only said that *if* certain blocks of Columbia Oil stock, including 65,872 now owned

by Philip G. Gossler, the present Chairman of the Board of Columbia Gas, are sold, and the approval of the Securities & Exchange Commission is secured, the Plan will be approved. Thus one of the principal original conspirators, Gossler himself, can indefinitely postpone the entry of the new decree by simply holding his Columbia Oil stock, meantime maintaining the presently existing restraint of trade in exactly the same form which was condemned by the Government petitions of January 12 and May 15, 1939.

Furthermore, as the Court below said:

> "The plan by its terms is made subject to the approval of the Securities and Exchange Commission and to such corporate action by stockholders of Columbia Oil as may be necessary and appropriate" (Government Brief, p. 19).

What assurance is there that the S. E. C. or Columbia Oil stockholders will approve? And when?

And, as the Government's objections to the Plan have *not* been met (see discussion immediately following), an appeal *may* be taken from any new decree.

C. Errors in Government's Brief.

We call attention to certain errors of fact contained in the Memorandum for the United States (hereinafter called the Government Brief) filed herein:

(1) On page 6 the Government states:

> "The United States as plaintiff in the cause below did not object to the approval of that plan provided that certain conditions be included therein. The District Court in its opinion directed the inclusion of those conditions."

This is an error. The Government objected to the approval of the Plan unless certain blocks of common stock of

Columbia Oil be disposed of by the owners, and included in the designated blocks are 30,358 shares held by Mrs. Katherine Clay, daughter of Mr. Gossler, and 25,009 shares held by E. W. Edwards, a former director of Columbia Gas (R. 403-404, 391). See statement to this effect in opinion of District Court annexed to Government Brief, page 24. The District Court's opinion contains no indication that the final decree will provide that these blocks of stock be sold as the Government's objection sought, but instead said:

> "A different situation, however, exists with respect to the stock of Edwards and of Mrs. Clay, daughter of Gossler. Neither of those persons is a defendant in this cause. The court has no jurisdiction or control over them. Edwards has not been a director of Columbia Gas since 1938. Possibly some agreement may be reached by the parties with respect to the treatment of these two blocks of stock before the time arrives for the entry of a final decree" (Government's Brief, pp. 26, 27).

(2) On page 4 of its Brief the Government states that the

> "reorganization of Panhandle Eastern, readjustment of Columbia Oil's interest in Panhandle Eastern, and readjustment of Columbia Gas' interest in Columbia Oil"

was *"pursuant to"* the provisions of the original consent decree. That is not the fact as the consent decree shows. The "readjustment of Columbia Oil's interest in Panhandle Eastern" included the acquisition of a majority of the common stock, and all of two issues of preferred stock, which is characterized as a violation of the anti-trust laws in the Government's petition of May 15, 1939 (R. 348).

(3) On page 6 of its Brief the Government states that the District Court "approved the Plan". The District

Court did not approve the Plan as the same was presented to it by the Columbia Companies. The District Court stated that *it would approve the Plan upon certain conditions being met.* The Court said:

> "Final approval of the plan and amendment of the consent decree will be conditioned upon the prior disposal by Gossler to another person or persons having no direct or indirect interest in or connection with Columbia Gas of any and all common stock of Columbia Oil which he may own.
>
> "Similar considerations apply to the stock held by officers and directors of Columbia Gas. They should not be interested in voting securities of Columbia Oil." (Government Brief, p. 26.)

(4) In its final paragraph on page 11, the Government takes the position that the decision of the District Court has resulted in the Consent Decree being changed and "the substitution of an entirely new plan". That is not the case. The District Court has indicated that upon certain conditions being complied with (see *supra*) it will enter a final decree approving the Plan advanced by the Columbia Companies. No final decree has been entered and therefore the Consent Decree is still in full force. There is no showing in this record or in the opinion of the Court below (annexed to the Government's Brief) that the voluntary Plan will ever be approved or the present Consent Decree ever be modified.

(5) On page 9 the Government seeks to show the difference between the proposed Plan and the relief sought by the instant applications. Several misstatements are made:

> (a) The Plan does not give Panhandle Eastern a firm option for one year but merely a refusal which could very easily be used to prevent Panhandle Eastern from ever acquiring the Detroit extension (R. 361).

(b) The instant applications do not seek the appointment of a trustee "to retain and dispose" of the extension, but instead to hold the same as trustee for Panhandle Eastern (R. 423-424, 539).

(c) The Government states that the Plan looks to a segregation of control "at a point between Columbia Gas and Columbia Oil; whereas the applications now on review seek divestment at the point between Columbia Oil and Panhandle Eastern th ugh the enforced sale of Columbia Oil's stock ownership in Panhandle Eastern". That is not the case. The applications on appeal do not seek divestment through sale of any of Columbia Oil's stock ownership of Panhandle Eastern; instead they seek only to eliminate the voting rights incident to certain parts of that stock and only to those parts which are alleged to be illegally held (R. 424, 539).

D. Contention Relief Sought Inconsistent with Consent Decree and Proposed Plan.

Appellees assert that these applications constituted an attack upon the consent decree and are made for the purpose of modifying and impeaching that decree. (Briefs in No. 268 of Columbia Gas, pp. 52, 53; and of Columbia Oil, p. 61.) The Memorandum of the United States asserts that there is a conflict between the proposed new decree and the relief sought by the appellants.

In fact, the relief sought by the appellants is in complete accord with the objectives of the Consent Decree, it will promote a dissolution of the unlawful restraint and monopolization, and will not prevent the operation of any provision of the existing Consent Decree or the proposed new decree. This will be shown by comparing the relief sought in these applications, the traditional remedy heretofore applied in similar cases, and the provisions of the proposed new decree.

The acquisition of a majority of the stock of Panhandle Eastern was the principal means used by the defendants to effectuate and maintain the unlawful restraint and monopolization. Hence, the simple, certain and prompt method of ending the unlawful condition would have been the complete and absolute divestiture of that stock, the obvious remedy being simply to undo what has been done. In all other similar anti-trust cases in which the United States has prevailed that method has been used; that is to say, there has been a divestiture of the very stock or other property unlawfully acquired. During the fifty years from the enactment of the Sherman Act in 1890 to the present time, there have been twenty-nine such cases, not including this case.* In the twenty-three in which the United States has either prevailed or accepted a consent decree, the decrees have required a divestiture of stocks, properties, bonds, liens, leases, etc., for the purpose of effecting a dissolution of the combination. This case is the only exception.

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*1. *U. S.* v. *E. C. Knight Co.*, 60 Fed. 306; 60 Fed. 934; 156 U. S. 1. Dismissed.
2. *U. S.* v. *Northern Securities Co.*, 120 Fed. 721; 193 U. S. 197. March 14, 1904.
3. *U. S.* v. *Standard Oil Co.*, 172 Fed. 177; 221 U. S. 1. July 29, 1911.
4. *U. S.* v. *American Tobacco Co.*, 164 Fed. 700; 221 U. S. 106. Nov. 16, 1911.
5. *U. S.* v. *Du Pont Co.*, 188 Fed. 127. June 13, 1912.
6. *U. S.* v. *Union Pacific R. R. Co.*, 188 F. 102; 226 U. S. 61; 266 U. S. 470. June 30, 1913.
7. *U. S.* v. *Great Lakes Towing Co.*, 208 Fed. 733; 217 Fed. 656. Relief refused—no corporate combination case made out.
8. *U. S.* v. *American Sugar Refining Co.*, Southern District, New York. Consent decree, May 9, 1922.
9. *U. S.* v. *Lake Shore Ry. Co.*, 203 Fed. 295. March 14, 1914.
10. *U. S.* v. *U. S. Steel Corporation*, 223 Fed. 55; 251 U. S. 417. Dismissed.
11. *U. S.* v. *United Shoe Machinery Co.*, 222 Fed. 349; 247 U. S. 32. Dismissed.

The prayers for relief in the several petitions and complaints filed in this case by the United States followed those cases. Thus, divestiture of the Panhandle Eastern stock was demanded in the original petition of March 6, 1935; again, in the first Amended and Supplemental Petition of October 30, 1935 (R. 30); again, in the second Supplemental Complaint of January 12, 1939 (R. 281); and finally, in the third proposed Amended and Supplemental Complaint of May 15, 1939 (R. 348). But the United States does not now insist on that relief.

The view of the special master, to whom was referred the proposed new decree, was to the same effect. He stated

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12. *U. S.* v. *International Harvester Co.*, 214 Fed. 987. Nov. 2, 1918.
13. *U. S.* v. *Corn Products Co.*, 234 Fed. 964. Nov. 13, 1916.
14. *U. S.* v. *Eastman Kodak Co.*, 226 Fed. 62. June 20, 1916.
15. *U. S.* v. *Quaker Oats Co.*, 232 Fed. 499. Dismissed.
16. *U. S.* v. *Reading Co.*, 226 Fed. 229; 253 U. S. 26. June 6, 1921.
17. *U. S.* v. *American Can Co.*, 230 Fed. 859; 234 Fed. 1019. Dismissed.
18. *U. S.* v. *Southern Pacific Co.*, 239 Fed. 998; 259 U. S. 214.
19. *U. S.* v. *Lehigh Valley R. R. Co.*, 225 Fed. 399; 254 U. S. 255. Nov. 7, 1923.
20. *U. S.* v. *New York, New Haven & Hartford R. R.*, Southern District, New York. Consent decree, Oct. 7, 1914.
21. *U. S.* v. *New England Fish Exchange*, District of Mass., 258 Fed. 932. Dec. 4, 1919.
22. *U. S.* v. *Swift & Co.*, Supreme Court, District of Columbia. Consent decree, Feb. 27, 1920.
23. *U. S.* v. *Cement Securities Co.*, District of Colorado. Consent decree, Dec. 13, 1924.
24. *U. S.* v. *Ward Food Products Co.*, District of Maryland. Consent decree, April 3, 1926.
25. *U. S.* v. *National Food Products Corporation*, Southern District, New York. Consent decree, March 4, 1926.
26. *U. S.* v. *Rand Gardex Bureau*, Southern District, New York. Consent decree, Dec. 9, 1926.
27. *U. S.* v. *Fox Theatres Corporation*, Southern District, New York. Consent decree, April 15, 1931.
28. *U. S.* v. *Foster & Kleiser Co.*, Southern District, California. Consent decree, March 13, 1931.
29. *U. S.* v. *Radio Corporation of America*, District of Delaware. Consent decree, Nov. 21, 1932.

that divestiture of the Panhandle Eastern stock "would be much *simpler* from a procedural point of view, would be *sure* to accomplish the result intended by the consent decree and would be acceptable to the Government." (R. 371, 381, 394.)

No party to this case has even attempted to controvert the efficacy of a divestiture of the Panhandle Eastern stock, or has cited any reason for failure to apply that remedy. This record contains no evidence of any fact to support any reason for avoidance of that remedy. Hence, it is safe to assume that that remedy has not been avoided because of its inapplicability to this case.

The inefficacy of the Consent Decree and the proposed new decree is not an issue on these applications, as that issue could not be raised by Panhandle Eastern under the limited purpose of these applications. These applications could not be based upon the proposition that those decrees are inadequate. The United States asserts, however, that the Consent Decree has failed utterly, and it is ostensibly because of that dissatisfaction that the defendants have proposed the new decree (R. 338, 340).

That divestiture of the very stock unlawfully acquired has been the traditional remedy, is mentioned merely to show that the return of 80,000 shares of the unlawfully acquired Panhandle Eastern stock and transfer of the Detroit extension, as sought by the appellants, are in accord with the well settled remedy and with the objectives of the anti-trust laws. The provisions of the proposed new decree are mentioned, not to show their inefficacy or to ask that they be changed, but merely to show that the return of the 80,000 shares and transfer of the Detroit extension, may be made without interfering in the slightest degree with those provisions.

The principal provisions of the proposed new decree are the following:

1. *As to the relation between Columbia Gas and Columbia Oil.* Columbia Gas will divest itself of 400,000 shares of preferred stock of Columbia Oil, by transferring it to Columbia Oil (R. 358-359).

2. *As to the relation between Columbia Gas and Michigan Gas.* Columbia Gas will sell Michigan Gas, giving Panhandle Eastern a one year refusal to buy (R. 361).

3. *As to the relation between Columbia Oil and Panhandle Eastern.* The Department of Justice is to have a veto privilege as to officers and directors of Columbia Oil and Panhandle Eastern. The plan for the proposed decree states:

> All officers and directors of Columbia Oil shall resign upon the entry of the order and the approval of the Plan by the Securities and Exchange Commission (to the extent required by law), and be replaced by officers and directors *not objectionable to the Department of Justice,* such directors to own no stock or securities of Columbia Gas. Such directors shall not include anyone who is now, or ever has been, an officer, director or employee of Columbia Gas or any of its subsidiary companies.
>
> * * * * * *
>
> the representatives of Columbia Oil on the Board of Directors of Panhandle Eastern shall be directors of Columbia Oil (R. 360-361).

The veto privilege is to be limited to five years, after which the protection ceases (R. 393).

Columbia Oil will "agree to use its best efforts to dispose of the $10,000,000 Class A preferred stock of Pan-

handle Eastern owned by it . . ." (R. 359). Note that disposition is not mandatory, but depends upon the mere volition of Columbia Oil. *There is not even an allusion to disposition of the $1,000,000 of Class B preferred stock, which elects two directors. That is to be retained by Columbia Oil.*

The proposed new decree has been formulated and offered, not by the Attorney General, but by the defendants. The conspicuous facts about it are its many serious omissions. They are: No separation between Columbia Oil and Panhandle Eastern. No dissolution of the general community of stockholders of Columbia Gas and Columbia Oil, except that the Court below, as a condition to its final approval of the plan, will require a complete and absolute divestiture by certain stockholders of their shares in Columbia Oil (Brief of U. S., p. 26). No change is absolutely required in the status of debtor and creditor which obtains between Columbia Oil and Columbia Gas, whereby Columbia Gas holds the entire funded debt of Columbia Oil, in the amount of $21,000,000.

It is evident that the court below feels no assurance that the proposed new decree will be effectual to end the restraint and monopoly. After reviewing the provisions of that decree, the court states that *"the influence of Columbia Gas over Columbia Oil will be minimized or removed"* (Government brief, p. 20). A decree which merely reduces the unlawful influence, or merely reduces a restraint and monopoly, does not meet the requirements of the law, whose objective is to completely and certainly end such conditions.

The prayers of the Appellants' applications relative to the Detroit extension provide for transfer by Columbia Gas of the stock of Michigan Gas to a trustee for the benefit of Panhandle Eastern and for repayment to Columbia Gas of all sums advanced by it to or for Michi-

gan Gas, less dividends and money received from Michigan Gas.

The provisions of the proposed decree on the same subject are that an option will be given to Panhandle Eastern to purchase the Detroit extension (otherwise known as Michigan Gas Transmission Corporation), at actual investment; and if that option is not exercised or a sale is not made elsewhere, a trustee shall be appointed to make a sale (R. 361). Thus, the appellants seek, and the new decree proposes, a transfer of the Detroit extension. Both provide for an acquisition by Panhandle Eastern. The repayment of advancements by Columbia Gas and the return of dividends and profits to Panhandle Eastern prayed for by the appellants, are not inconsistent with the proposed decree. The differences, if any, are immaterial, and may be easily reconciled by the court below on mandate from this Court.

The prayers relative to the 80,000 shares of Panhandle Eastern common stock are that they be surrendered to Panhandle Eastern in exchange for securities without voting rights. Columbia Oil now has 404,326 shares of Panhandle Eastern common stock out of a total of 807,367 (R. 431) outstanding. A return of 80,000 shares would reduce its common stock holdings to 324,326, and its percentage of the total from a majority to a fraction over 40 percent. The appellees would no longer exercise control and be able to prevent that full and free development and extension of the Panhandle Eastern business which it is to the interest of Mokan to bring about, and which would follow an independent and unrestrained use of the Detroit extension.

The same is true of the relief sought relative to the preferred stock.

But the appellees contend that return of the 80,000 shares would be in conflict with the decree, on the theory that they are permitted by the decree to own and hold the Panhandle Eastern stock, and that that stock must be retained by them for the purposes of that decree (Brief of Columbia Gas, pp. 52, 53; of Columbia Oil, p. 62).

Neither the Consent Decree nor the proposed new decree, however, requires retention of any stock, securities, property of, or interest in, Panhandle Eastern by the defendants.

The contention is based on the erroneous view that the Consent Decree and the proposed new decree constitute a grant of rights to the defendants. Those decrees are limitations, not grants, of rights to the defendants. Their rights in the Panhandle Eastern stock are derived, like all property rights, from the general law. The prohibition of certain acts by the decrees are not grants of permission to do all acts not prohibited. If appellees' contention were correct, they would have no right to dispose of the Panhandle Eastern stock.

Another objection, equally untenable, is that the Consent Decree under which these applications have been made, has been "substantially repealed." (Government Brief, p. 4.) The theory must be that the act of the appellees in submitting another decree has wiped out the right of the Appellants to relief under the Consent Decree. How? Why?

But the Consent Decree has not been wiped out. No new decree has been entered, and may never be entered. See *supra*, pp. 28-29.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 268

MISSOURI-KANSAS PIPE LINE COMPANY, APPELLANT,

v.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, ET AL.

No. 269

PANHANDLE EASTERN PIPE LINE COMPANY, APPELLANT,

v.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

MEMORANDUM FOR THE UNITED STATES

The United States, as one of the appellees in the above causes, files this Memorandum for the purpose of bringing to the Court's attention the limited interest of the United States in these appeals. In order to present adequately our posi-

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tion, it is necessary to make a brief factual statement.

1. *The proceedings involved.* (a) These appeals are from two orders entered April 23, 1940 (R. 565, 541), by the District Court for the District of Delaware in a suit in equity commenced March 6, 1935 (R. 1, 10), by the United States under the antitrust laws, against Columbia Gas & Electric Corporation (hereinafter referred to as "Columbia Gas"), Columbia Oil & Gasoline Corporation (hereinafter referred to as "Columbia Oil"), and certain individual defendants.

The United States in its petition (R. 10, 14) charged in effect that the defendant Columbia Gas, acting directly and also through Columbia Oil as its controlled instrumentality, dominated and controlled Panhandle Eastern Pipe Line Company (hereinafter referred to as "Panhandle Eastern"), with the purpose and effect of preventing competition between Panhandle Eastern and Columbia Gas in the distribution of natural and artificial gas, and with monopolizing trade and commerce in natural gas in certain sections of the United States.

On January 29, 1936, a consent decree (R. 142) was entered pursuant to a stipulation (R. 138) between the United States and the defendants. The consent decree provided for the appointment of a trustee thereunder to hold and vote the controlling stock interest owned by Columbia Oil in Panhandle Eastern (R. 146), and also contained

elaborate injunctive provisions designed to secure independence of action on the part of Panhandle Eastern in the conduct of its business (R. 144). The consent decree also contained provisions contemplating the construction of a pipe line connecting the existing line of Panhandle Eastern at a point in Indiana with the City of Detroit, so as to enable Panhandle Eastern to accept and perform a contract which would make the City of Detroit the principal consumer of Panhandle Eastern's natural gas supply (R. 148).

Although Panhandle Eastern was not a party to the Government's suit, the consent decree granted it the right to apply for enforcement thereof or further relief thereunder, particularly with regard to any attempt by Columbia Gas to reassert its alleged control of Panhandle Eastern as a result of Columbia Gas' participation or interest in the proposed pipe line extension to Detroit (R. 148–149).

The orders here on appeal (R. 565, 541), dismissed two applications filed March 23, 1940 (R. 412), and April 16, 1940 (R. 526), respectively, purporting to seek on behalf of Panhandle Eastern the enforcement of its rights under the original consent decree.

(b) However, prior to the filing of those applications, the United States, on January 12, 1939, as plaintiff in the suit below, initiated further proceedings in the cause, looking towards the correc-

tion of the very abuses against which the applications herein seek relief. Those new proceedings are now practically concluded in the court below, and have the effect of substantially repealing the original consent decree entered January 29, 1936, including the provisions thereof under which the instant applications were filed; there is substituted an entirely different plan of divestiture between the defendants and Panhandle Eastern together with new injunctive provisions. Those proceedings will be described briefly below.

Following the entry of the original consent decree and pursuant to its provisions and those of the concurrent stipulation upon which it was entered, elaborate plans of financial readjustment were consummated, which included reorganization of Panhandle Eastern, readjustment of Columbia Oil's interest in Panhandle Eastern, and readjustment of Columbia Gas' interest in Columbia Oil. Moreover, the proposed new pipe line to Detroit (hereinafter referred to as the "Detroit pipe line extension") was constructed and ownership thereof retained by Columbia Gas through a subsidiary company. All of that action was taken in the year 1936 shortly after the entry of the original consent decree. (See report of Gano Dunn, trustee under the consent decree, R. 149–248.)

On January 12, 1939, the United States filed a supplemental complaint in the original cause (R. 274), alleging in effect that the original consent

decree and concurrent stipulation and the measures of performance taken thereunder had not achieved the declared purpose of the decree which was to place Panhandle Eastern in a position of free and independent action. As further relief under the original consent decree, the Government prayed that either Columbia Gas be required to divest itself of all interest in Columbia Oil or that Columbia Oil be required to divest itself of all interest in Panhandle Eastern.

On May 15, 1939, after failure of the defendants to present any plan for further relief in conformity with the complaint filed January 12, 1939, the United States asked leave to withdraw that complaint, and moved that the consent decree be vacated and that the case be restored for trial upon an amended and supplemental complaint then tendered for filing. (R. 332, 333.) The relief sought in the amended and supplemental complaint then tendered was the divestiture by Columbia Oil of all of its interest in Panhandle Eastern and the divestiture by Columbia Gas of its ownership of the Detroit pipe line extension. (R. 348.)

Before the District Court acted on the Government's motions filed on March 15, 1939, the defendants, on June 20, 1939, offered to the Court for approval a so-called plan of voluntary divestiture (R. 356) which they asserted would be adequate to accomplish the purpose of the supplemental proceedings by the Government and at the same time

would dispose of the litigation without trial.[1] The Court referred that plan to a special master for the purpose of taking testimony and making recommendations. (R. 371–372.) On July 29, 1939, the special master filed his findings and recommended that the plan be approved. (R. 373, 384.) On March 23, 1940 (the same day on which the application in No. 268 was filed purportedly by Panhandle Eastern) the findings and recommendations of the special master came on for hearing and were argued orally before the District Court. On January 18, 1941, the District Court filed its opinion on the findings and recommendations of the special master, in which the Court approved the plan and directed that an order be entered accordingly. The opinion of the District Court approving the plan is printed in the Appendix hereto, p. 12, *infra*. The United States as plaintiff in the cause below did not object to the approval of that plan provided that certain conditions be included therein. The District Court in its opinion directed the inclusion of those conditions.

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[1] On July 5, 1939, Missouri-Kansas Pipe Line Company, petitioner in No. 268 herein, owner of over 40% of the stock of Panhandle Eastern, moved to intervene. (R. 363.) The motion was denied without prejudice to the right of Missouri-Kansas to be heard as "amicus curiae on questions of law and fact in regard to the fairness and effectiveness of the proposed plan filed herein June 20, 1939." (R. 371.) An appeal to review the denial of intervention was dismissed in *Missouri-Kansas Pipe Line Co.* v. *Columbia Gas & Electric Corp.*, 108 F. (2d) 614 (C. C. A. 3d) on jurisdictional grounds, and this Court denied certiorari, 309 U. S. 687.

Thus, the supplementary proceedings instituted by the United States in 1939 have resulted in an opinion of the District Court, approving a plan which, it is believed, will correct the abuses that persisted after the 1936 consent decree. The applications here on review seek relief against those abuses, but ask for that relief through a different plan of divestiture.

2. *The limited interest of the United States in these appeals.* (a) The court below dismissed Panhandle Eastern's application on the ground that there was lacking the necessary corporate authorization for the application; the controversy appeared to turn upon whether the votes at a meeting of Panhandle Eastern's stockholders were correctly counted. (R. 520–526.) Whether the court below erred in dismissing that application is presented in No. 269, herein. Shortly after the dismissal of Panhandle Eastern's application, a similar application was filed on Panhandle Eastern's behalf by Missouri-Kansas Pipe Line Company (referred to as "Mokan"), the leading minority stockholder in Panhandle Eastern. (R. 526–540.) That application was denied without opinion (R. 541–542), and the correctness of the District Court's ruling in that regard is presented in No. 268, herein. There appears to be considerable controversy as to whether the derivative application was properly filed by Mokan.

The genuineness of Panhandle Eastern's application in No. 269 and the right of Mokan to main-

tain a derivative proceeding in No. 268, are sharply contested by Columbia Gas and Columbia Oil. The United States, however, has no interest in those questions; they can be more appropriately argued by the private parties, and we, therefore, take no position with respect thereto.[2]

If those questions are the only ones now before this Court, then the United States has no interest whatever in these appeals. However, if these appeals should open the broader question with respect to the relief sought in the applications below, then the United States is interested in sustaining the result reached in the January 18, 1941 opinion of the court below. This litigation has been before the District Court for a number of years, and since the plan approved in the January 18, 1941 opinion is believed to satisfy the public interest, it would be undesirable to protract this litigation further in order to consider the plan offered by the appellants. The differences between the two plans are outlined immediately below.[3] We therefore oppose any disposition of these appeals inconsistent with the January 18, 1941 opinion.

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[2] Likewise we shall not argue the question as to the finality of the orders on review.

[3] The public interest would probably be served by either plan, if it could feasibly be put into operation. Indeed, the Government has suggested both plans at prior stages of this litigation. See Appendix, p. 17, *infra*. But once one plan has been adopted, it is in the public interest to bring the litigation to as early a conclusion as possible.

(b) The difference between the relief sought in the applications now on review and the plan approved by the District Court on January 18, 1941 will be briefly summarized.

Both courses of action deal with the relationships of Columbia Gas, Columbia Oil, and Panhandle Eastern, and the disposition and ownership of the Detroit pipe line extension now owned by Columbia Gas.

The plan approved by the District Court provides for the sale by Columbia Gas of its interest in the Detroit Pipe Line extension to Panhandle Eastern, or if Pandhandle Eastern shall fail to exercise its option of purchase within a limited time, then sale must be made to an independent third person. The applications now on review seek the appointment of a trustee to retain and dispose of the Detroit pipe line extension.

The plan approved by the District Court looks principally to segregation of control at a point between Columbia Gas and Columbia Oil; whereas, the applications now on review seek divestment at the point between Columbia Oil and Panhandle Eastern through the enforced sale of Columbia Oil's stock ownership in Panhandle Eastern.

Thus the plan approved by the District Court provides for the termination of the trust covering Columbia Oil's voting stock in Panhandle Eastern which was created under the original consent decree; it permits the retention by Columbia Oil of

its stock ownership in Panhandle Eastern, but provides for the selection of new directors of Columbia Oil who shall be "not objectionable" to the Government and who shall in turn represent Columbia Oil as majority directors on the board of Panhandle Eastern. That plan further provides that all the preferred stock of Columbia Oil, entitled to elect a minority of its directors, which is now owned by Columbia Gas, shall be returned to Columbia Oil in exchange for certain oil and gasoline properties now owned by Columbia Oil, a circumstance which the Government alleged had the effect of bringing the two companies into close operation and personnel relationships. With those measures accomplished, the interest of Columbia Gas in Columbia Oil would be limited to the ownership of $21,000,000 of debentures of Columbia Oil, and in this respect the plan approved by the District Court further provides that the principal amount of those debentures shall be reduced by retirement to $11,000,000 and Columbia Gas shall agree to reduce the coupon rate upon the amount outstanding from six percent to three percent.

The plan approved by the District Court and accepted by the Government is believed to be a practical solution to the difficulties arising from the complex relationships of the parties concerned.

(c) Accordingly, if this Court should go beyond the narrow questions apparently considered by the

court below upon the applications here upon review, we respectfully submit that these applications should be considered in the light of the supplementary proceedings and that no disposition of the applications should be made here that would be inconsistent therewith.

It may even be that the applications are in substance moot as a consequence of the supplementary proceedings. The applications are not requests to *intervene* in the supplementary proceedings. Rather, they seek relief *under* the 1936 consent decree. But the supplementary proceedings have resulted in a decision of the District Court which substantially does away with the 1936 decree and provides for the substitution of an entirely new plan. Accordingly, the very basis upon which these applications proceed, i. e. the 1936 decree, can no longer be regarded as supporting such applications, when viewed in the light of the latest opinion of the District Court, providing for an entirely different plan. In the circumstances, it would appear that these applications are now in substance moot, and that the Court should refrain from passing upon them.

Respectfully submitted,

ROBERT H. JACKSON,
Attorney General.

THURMAN ARNOLD,
Assistant Attorney General.

JANUARY 1941.

APPENDIX

In the District Court of the United States For the District of Delaware

No. 1099 in Equity

UNITED STATES OF AMERICA, PLAINTIFF, v. COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, CHARLES A. MUNROE, THOMAS R. WEYMOUTH, THOMAS B. GREGORY, EDWARD REYNOLDS, JR., BURT R. BAY AND JOHN H. HILLMAN, JR., DEFENDANTS

Hearing on report of special master recommending approval of a plan of divestiture filed by the defendant corporations and on separate exceptions to the report filed by the United States, by the City of Detroit, and by Missouri-Kansas Pipe Line Company (herein referred to as "Mokan"); and further, for a modification of the consent decree entered in this cause January 29, 1936.

October 30, 1935 the United States filed its amended and supplemental petition, superseding its original petition, charging Columbia Gas & Electric Corporation (herein referred to as "Columbia Gas"), Columbia Oil & Gasoline Corporation (herein referred to as "Columbia Oil"), and certain individuals with dominating and controlling the management and operation of Panhandle Eastern Pipe Line Company (herein referred to as

"Panhandle Eastern") with the purpose and effect of preventing competition, actual and potential, between Panhandle Eastern and Columbia Gas and of monopolizing and attempting to monopolize interstate trade and commerce in natural gas in certain sections of the United States, in violation of the anti-trust laws.

The several defendants filed answers to the petition specifically denying the charges therein.

Columbia Gas is a holding company owning the stock of more than fifty operating public utility subsidiaries engaged in the production, transmission and distribution of natural gas. Their field of operations extended from Muncie, Indiana, through the States of Ohio, Kentucky, West Virginia and Pennsylvania, and to other points on the eastern seaboard. Together, they constituted the "Columbia System". Their operations were concentrated in the State of Ohio where the petition alleges they enjoyed a virtual monopoly in natural, mixed and artificial gas. In 1930 Columbia Oil was organized by Columbia Gas to hold the oil and gasoline producing properties of the Columbia System segregated from its public service properties. In 1928 Mokan was organized for the purpose of producing and distributing natural gas in the States of Kansas and Ohio and intervening states. By 1930 Mokan had acquired substantial gas producing acreage in the Panhandle district of Texas and in Kansas. In December 1929 Mokan organized Panhandle Eastern for the purpose of building and operating a natural gas pipe line from the sources of supply in Texas and Kansas to Indianapolis, with possible extensions to points in Michigan and Ohio.

CONSENT DECREE

January 29, 1936, pursuant to a stipulation entered into between the Government and the defendants, a consent decree was entered by this court in this cause. The general object of the consent decree was to prevent Columbia Gas from exercising dominion or control, direct or indirect, over the affairs of Panhandle Eastern. To this end elaborate injunctive provisions were inserted in the decree. The decree provided, among other things, that voting stock of Panhandle Eastern then held or afterwards acquired by Columbia Oil was to be placed in the custody of a trustee named in the decree, who was to vote the stock for the election of the number of directors of Panhandle Eastern which the stock was entitled to elect (six out of a total of nine), such directors to include the trustee and the remainder to be selected by him from among persons recommended by Columbia Oil "in conference and with the advice of the trustee", but excluding any past or present officer, director, agent, or employee of Columbia Gas; and the trustee was empowered "to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree". The decree named Gano Dunn as such trustee.

The decree enjoined the defendants from exercising dominion or control over Panhandle Eastern or interfering with its independence of action in the sale of gas, and from owning securities of Panhandle Eastern, subject, however, to the following: The defendants were permitted to own stock of Columbia Gas and Columbia Oil and to be directors

and officers thereof; Columbia Gas was permitted to own obligations (without voting rights) of Panhandle Eastern; and Columbia Oil was permitted to own or acquire voting stock or obligations of Panhandle Eastern subject to the trusteeship created by the decree.

The decree further contained provisions applicable to financing the proposed extension of the Panhandle Eastern pipe line to the City of Detroit, Michigan.

The decree further provided for a termination, with the approval of the Court, of the trust created thereunder, when:

(1) Columbia Gas has divested itself of all control, direct or indirect, of Panhandle Eastern by—

(a) No longer owning voting stock of Columbia Oil, or

(b) By Columbia Oil divesting itself of ownership of all stock of Panhandle Eastern, or

(2) "Under the circumstances then existing, the continuation of said trust is no longer essential or necessary in carrying out the purposes of this decree."

In addition, the decree provided for a termination of its injunctive provisions, with the approval of the Court, when Columbia Gas no longer owned voting stock of Columbia Oil.

The consent decree was entered pursuant to a stipulation between the parties as above recited. That stipulation required performance by Columbia Gas and Columbia Oil of five or more essential requirements. It is unnecessary to discuss these requirements or to recite the steps taken under the consent decree and stipulation. The working ar-

rangement provided by the consent decree has been carried out from the entry thereof. After the entry of the consent decree the stock of Panhandle Eastern owned by Columbia Oil was promptly lodged with Gano Dunn as Trustee and has continued to be held and voted by him. The Trustee has performed his duties as required by the consent decree.

SUPPLEMENTAL COMPLAINT

January 12, 1939 the United States filed a supplemental complaint in this cause stating, among other things:

> "The course of events since the entry of said decree on January 29, 1936, has made it increasingly clear (1) that the only effective way to restore and maintain a position of free and independent action for Panhandle Eastern is to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern, as contemplated by the last paragraph of section III of said decree, and (2) that to accomplish the purpose of said decree, it is necessary to supplement said decree by a further order requiring the formulation and submission to this Court for approval of a suitable plan or plans to accomplish such divestiture."

After referring to the restrictions found in Section II and the trust established with Gano Dunn in Section III of the consent decree, the supplemental complaint concludes by asking for relief in

the alternative through an order of the Court as follows:

> "Directing Columbia Gas to divest itself of all control, direct or indirect, legal or practical, of Panhandle Eastern, either by disposing of all interest which it may have in any stock of any class having present or potential voting rights in Columbia Oil, or by causing Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern; and, to that end:
>
> (a) Directing Columbia Oil to proceed straightway to formulate and submit to this Court for approval, through the trustee for sale constituted in accordance with subsection 5 of this section III, a plan for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern;
>
> (b) Directing Columbia Gas to proceed straightway to formulate and submit to this Court for approval, as an alternative to any plan submitted by Columbia Oil pursuant to paragraph (a) of this subsection 4, a plan for the sale or other disposition by it of all interest which it may have in any securities having present or potential voting rights in Columbia Oil."

Defendants Columbia Gas and Columbia Oil filed answers in opposition to the supplemental complaint.

May 15, 1939 the United States filed two motions: (1) For leave to abandon its supplemental complaint filed January 12, 1939, and (2) to vacate the consent decree entered January 29, 1936, and to restore the original anti-trust action to the trial

calendar upon an amended and supplemental complaint tendered with its motions. Action on these motions was not pressed.

June 20, 1939 defendants filed the voluntary plan of divestiture which is now before the Court, looking to a modification of the consent decree. This plan is substantially the first of the alternatives sought by the Government in its supplemental complaint of January 12, 1939.

July 10, 1939 the plan of divestiture was referred to a special master to "make report to this Court of his findings of fact, conclusions of law and recommendations concerning the said motion and said proposed plan". The order of reference provided that permission be granted to Mokan, then the holder of all of the stock of Panhandle Eastern not owned by Columbia Oil, and to the City of Detroit, Michigan, and to the City of Toledo, Ohio, to appear at the hearing as *amici curiae* but not as intervenors. Mokan and the City of Detroit appeared, cross-examined witnesses, and filed briefs.

July 29, 1939 the special master filed his report with the recommendation:

> "The undersigned respectfully recommends, if your Honor should conclude that enlargement of the provisions of the plan dealing with retention of jurisdiction is unnecessary, then that your Honor approve the amended plan and upon approval of the Securities and Exchange Commission to the extent required by law and upon the taking of appropriate corporate action by the stockholders of Oil necessary under Section 6 of the Plan as amended, that the motion of Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation re-

ferred to in the order of reference dated July 10, 1939 be granted, that the consent decree herein dated January 29, 1936 be modified as provided in that motion and in accordance with the terms of the proposed plan."

The Court finds that the provisions of the plan respecting the retention of jurisdiction are adequate and an enlargement of those provisions is unnecessary. The plan by its terms is made subject to the approval of the Securities & Exchange Commission and to such corporate action by stockholders of Columbia Oil as may be necessary and appropriate.

PLAN OF DIVESTITURE

Columbia Oil was organized in 1930 as a subsidiary of Columbia Gas to hold oil and gasoline properties of the Columbia System. The business of Columbia Oil and of Columbia Gas was intimately associated. This relation contributed to close operating and personal ties between the two companies.

Columbia Oil has the following securities outstanding: 400,000 shares of participating preferred stock, owned entirely by Columbia Gas, and entitled to elect a mi ority of directors of Columbia Oil; $21,000,000 p cipal amount of twenty-year debentures due in 1956, carrying 6% interest and owned entirely by Columbia Gas; 2,336,826 shares of common stock. The participating preferred stock and debentures were issued to Columbia Gas and their retention was permitted by the consent decree.

The plan provides:

(1) Columbia Gas will surrender to Columbia Oil the 400,000 shares of participating preferred stock of Columbia Oil, being all of the issue of that stock, in exchange for all oil and gasoline properties of Columbia Oil.

(2) Columbia Oil will pay $10,000,000 to Columbia Gas on its debenture indebtedness aggregating $21,000,000. The $10,000,000 is to be raised by Columbia Oil through persons having no connection with Columbia Gas.

(3) Columbia Gas will reduce from 6% to 3% the interest rate on the $11,000,000 of debentures remaining outstanding.

(4) In the event of default upon such remaining debentures, Columbia Gas will not be permitted to acquire ownership or control or be a purchaser in judgment sale of securities of Panhandle Eastern owned by Columbia Oil.

The result of these changes will be: (a) Columbia Gas will own no stock in Columbia Oil and accordingly will possess no voting rights therein; (b) Columbia Oil will hold as its only asset stock of Panhandle Eastern, and all operating relationship with Columbia Gas will terminate; (c) the indebtedness of Columbia Oil to Columbia Gas will be reduced almost one-half; (d) interest payments on the remaining indebtedness will be halved. Thus the influence of Columbia Gas over Columbia Oil will be minimized or removed.

(5) Columbia Gas will grant an option to Panhandle Eastern, for one year from the entry of a final decree approving the plan, to purchase at the actual investment of Columbia Gas therein the so-called Detroit Extension of the Panhandle East-

ern pipe line connecting its Eastern terminus with the City of Detroit if Panhandle Eastern buys a gas pipe line of Ohio Fuel Gas Company in Indiana for $355,191. This Detroit Extension is owned by Michigan Gas Transmission Corporation and Indiana Gas Distribution Corporation, wholly owned subsidiaries of Columbia Gas. If, during the year, Columbia Gas receives from sources not connected with it a satisfactory offer to purchase such properties, Panhandle Eastern will have ninety days within which to meet such terms. However, if Panhandle Eastern fails to meet such offer, Columbia Gas shall be free to accept the earlier offer. If no such sale has been made within the one-year period, a trustee shall be appointed to make sale to any purchaser not connected with Columbia Gas for a price not less than the actual investment of Columbia Gas therein, unless Columbia Gas consents to a lesser price. Thus, Columbia Gas parts with the physical link connecting Panhandle Eastern with Detroit.

(6) The following securities of Panhandle Eastern were issued to Columbia Oil pursuant to plans of reorganization and settlement with the Receivers of Mokan: 100,000 shares (the entire issue) of Class A Preferred stock (not entitled to vote for directors); 10,000 shares (the entire issue) of Class B Preferred stock (entitled to elect two directors); and 404,326 shares of common stock of a total of $808,652 shares outstanding.

Columbia Oil has a board of seven directors. The voting rights of the stock it beneficially owns in Panhandle Eastern elects six of the nine directors of Panhandle Eastern. Those directors are

elected by the trustee pursuant to the terms of the consent decree. The plan provides that the trusteeship created by the consent decree with respect to voting securities of Panhandle Eastern owned by Columbia Oil shall terminate. Thereupon, all officers and directors of Columbia Oil and the six directors of Panhandle Eastern elected by the stock of Columbia Oil shall resign; and the directors of Columbia Oil shall own no stock or securities of Columbia Gas. The directors of Columbia Oil shall not include anyone who has ever been an officer, director or employee of Columbia Gas or any of its subsidiaries. For a period of five years such directors shall not include any person "who shall be objectionable to the Department of Justice." Directors of Panhandle Eastern elected by Columbia Oil shall also be directors of Columbia Oil elected under the plan. Jurisdiction of this cause shall be retained by this Court "for the further purpose of requiring the resignation of any officer or director of Columbia Oil, or any successor thereto, whenever such step may be necessary to effectuate the purposes of the decree." Further, to effectuate said purposes Columbia Oil will take appropriate corporate action to "stagger" its board of directors into three classes elected for terms of one, two, and three years, respectively, with the maximum number permissible by law elected for the longest term.

The foregoing provisions of the plan will create a new slate of directors for Columbia Oil and a new slate of officers to be elected by such new directors. It will also provide a new slate of directors of Panhandle Eastern representing Columbia

Oil. All directors elected by Columbia Oil, however, shall have no interest in Columbia Gas or have been an officer, director, or employee of Columbia Gas or any of its subsidiaries. Moreover, such directors must not be objectionable to the Department of Justice. The power continues to reside in this Court to require the resignation of any officer or director of Columbia Oil with the consequent disqualification to serve as a director of Panhandle Eastern representing Columbia Oil "whenever such step may be necessary to effectuate the purposes of the decree".

AMENDMENT OF CONSENT DECREE

To meet the changed conditions resulting from the carrying out of the plan of divestiture, the plan provides for the amendment of the consent decree in the following particulars:

(1) To terminate the Trusteeship of Gano Dunn.

(2) To substitute the following injunctions in lieu of the injunctive provisions contained in Sections II and IV. of the consent decree:

(a) Injunctions prohibiting Columbia Gas and the individual defendants from acquiring, owning or voting any securities of Panhandle Eastern, and any securities of Michigan Gas Transmission Corporation if and when Columbia Gas shall have sold its investment therein as contemplated in the plan;

(b) Injunctions prohibiting Columbia Gas from acquiring, owning or voting any securities of Columbia Oil, except that it may continue to own the $11,000,000 of de-

bentures of Columbia Oil and may acquire up to $2,000,000 of additional debentures under existing commitments; also from controlling Columbia Oil or Panhandle Eastern, or Michigan Gas Transmission Corporation if and when its investment therein is disposed of; and

(c) Injunctions prohibiting the individual defendants from acquiring, owning or voting securities of Columbia Oil in addition to those now owned by them, participating in the management of Columbia Oil or of Panhandle Eastern, or participating in the management of Michigan Gas Transmission Corporation if and when the investment of Columbia Gas therein is disposed of as contemplated by the plan.

The plan further provides that the consent decree shall be amended to provide for the sale within five years by Philip G. Gossler of all stock owned by him in Columbia Oil and an injunction against his voting such stock in the interval until it is disposed of.

The Government objects to approval of the plan unless certain blocks of common stock of Columbia Oil "be disposed of by the present holders thereof to other persons having no direct or indirect interest in or connection with Columbia Gas & Electric Corporation on or before the entry of any final order approving the amended plan." These blocks of common stock are:

Holders	*Shares*
The United Corporation and its subsidiary, New York United Corporation	84,769
Philip G. Gossler	65,872
Mrs. Katherine Clay	30,358
E. W. Edwards	25,009
Present officers and directors of Columbia Gas	8,697

Since the Master's report arrangements satisfactory to the Government have been made which eliminate the necessity for any provision relating to United's stock. The United Corporation has agreed to be made a party to this proceeding and that the decree herein prohibit it from voting the stock of Columbia Oil which it owns without the prior approval of this Court except that it may vote such stock for the purpose of a quorum and for the proposed plan.

Gossler was president of Columbia Gas from 1926 until the filing of the Government's petition in October, 1935. He was the chief executive officer of Columbia Gas during the entire period complained of in the petition. He remained president of that company until he assumed his present office of chairman of the board. He was one of the three voting trustees of common stock of Panhandle Eastern from the time of the creation of such voting trust until September 19, 1935. In 1930 and 1931, when the conspiracy of which the Government complains in its petition had its origin, he was also a director of Panhandle Eastern and a director and president of Columbia Oil. The petition alleges that he was "a central figure, if not the prime mover, in the creation and execution of the conspiracy complained of." He is the largest individual holder of common stock of Columbia Oil, excluding The United Corporation. He is also a substantial holder of common stock of Columbia Gas.

The plan provides that Gossler shall "within five years after the entry of the order approving the Plan, sell all stock now owned by him in Columbia

Oil, or any successor thereto, and, in the intervening period so long as he shall own any stock in Columbia Oil, or any successor thereto, shall be enjoined from voting any shares of such stock or suggesting how any shares of such stock owned by any of his relatives should be voted."

It is true that this proposal will neutralize the voting power of Gossler's stock. It does not, however, remove the substantial financial interest he may continue to have for at least five years from the entry of a final decree in Columbia Oil while at the same time remaining chairman of the board and a substantial stockholder of Columbia Gas. The record does not justify a finding that undue hardship would be suffered by Gossler in requiring him to dispose of his stock on or before the entry of a final decree approving the plan. If hardship were entailed, such result must be held an incident of this litigation and a contribution by one of the principal defendants to the accomplishment of the object sought in this proceeding. Final approval of the plan and amendment of the consent decree will be conditioned upon the prior disposal by Gossler to another person or persons having no direct or indirect interest in or connection with Columbia Gas of any and all common stock of Columbia Oil which he may own.

Similar considerations apply to the stock held by officers and directors of Columbia Gas. They should not be interested in voting securities of Columbia Oil.

A different situation, however, exists with respect to the stock of Edwards and of Mrs. Clay, daughter of Gossler. Neither of those persons is

a defendant in this cause. The court has no jurisdiction or control over them. Edwards has not been a director of Columbia Gas since 1938. Possibly some agreement may be reached by the parties with respect to the treatment of these two blocks of stock before the time arrives for the entry of a final decree.

Mokan raises the same objections urged by the Government with respect to the stock of the individual stockholders above mentioned. It adds to that list Charles A. Munroe and William P. Philips, voting trustees of the dissolving voting trust of Columbia Oil, and four brokerage firms. Since the dissolution of the voting trust, the voting trustees have not voted stock held by them and have advised the court they will not vote such stock. There is no evidence of any connection between Columbia Gas and any of the four brokerage firms except that a member of one firm is a director of Columbia Gas and another member (now deceased) was formerly a director of Columbia Gas. The owners thereof have the right to direct how their shares shall be voted. The Court has no jurisdiction over them. No order will be made respecting this stock.

The plan of divestiture provides that for a period of five years from the date of the entry of an order approving the plan, the directors of Columbia Oil shall be persons "not objectionable to the Department of Justice". Mokan asserts that such an amendment is illegal under the Laws of Delaware because stockholders of a Delaware corporation may choose as their directors whomsoever they please. Mokan further asserts that the adoption

of such an amendment would not bind the dissenting minority.

The charter of Columbia Oil may be amended by its stockholders to provide the qualifications of a candidate for director. Under Delaware law it would be possible by charter amendment to impose as a qualification of eligibility for a period of five years the requirement that a candidate be not objectionable to the Department of Justice. An amendment to that effect would bind both the majority voting for it and any dissenting minority. *Triplex Shoe Co.* v. *Rice and Hutchins,* 17 Del. Ch. 356. *Maddock* v. *Vorclone Corp.,* 17 Del. Ch. 39. *Morris* v. *American Pub. Utilities Co.,* 14 Del. Ch. 136.

Irrespective of Delaware law, this court in a Federal anti-trust case has the right to impose such a requirement as to the qualification of directors. Columbia Oil is before the Court as a party. For the purpose of enforcing the anti-trust laws an injunction binding Columbia Oil can also bind its stockholders.

The other objections raised by Mokan to the plan of divestiture have been fully considered by the Court and have been found untenable.

In addition, the City of Detroit objects to the approval of the plan and urges that the plan of divestiture should follow substantially the second of the alternatives sought by the Government in its supplemental pleading, i. e., by causing Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern. The question before the Court, however, is not the relative merits of two plans of divestiture. The question is simply whether the

plan before the Court is adequate to meet the requirements for relief under the anti-trust laws. The Government has taken the position that the plan submitted, with certain modifications which this Court has approved, will be effectual to accomplish the relief sought. The City of Detroit has harkened back to a plan of divestiture not developed at the hearings or considered by the special master and not before the Court.

An order in accordance with this opinion may be submitted.

(Sgd.) JOHN P. NIELDS, *J.*

JANUARY 18, 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941

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FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM 1940

No. 268

MISSOURI-KANSAS PIPE LINE COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, CHARLES A. MUNROE, THOMAS R. WEYMOUTH, THOMAS B. GREGORY, EDWARD REYNOLDS, JR., BURT R. BAY and JOHN H. HILLMAN, JR.,
Appellees.

BRIEF OF APPELLEE COLUMBIA GAS & ELECTRIC CORPORATION

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IN THE

Supreme Court of the United States

OCTOBER TERM 1940

MISSOURI-KANSAS PIPE LINE COMPANY, *Appellant,* *vs.* THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, CHARLES A. MUNROE, THOMAS R. WEYMOUTH, THOMAS B. GREGORY, EDWARD REYNOLDS, JR., BURT R. BAY and JOHN H. HILLMAN, JR., *Appellees.*	No. 268

BRIEF OF APPELLEE COLUMBIA GAS & ELECTRIC CORPORATION

NATURE OF THE PROCEEDING

This is an appeal from an order (R. 541-542) entered by the United States District Court for the District of Delaware on April 23, 1940, denying an application by appellant to intervene in a civil anti-trust suit brought by the United States Department of Justice against appellees.

The application was denied by the District Court without opinion. However, a previous application to intervene

by the same appellant, asking for the relief which is asked for in the instant application, had been denied by the same District Court about a year earlier, on March 29, 1939, with an opinion (R. 314; reported in 27 F. Supp. 116), and the appellant states in its Statement As to Jurisdiction (p. 3 thereof), referring to this opinion, that "petitioner believes it states the grounds upon which the Court acted in denying the instant application."

Jurisdiction of this Court is invoked by appellant under the Expediting Act of 1903 (Act Feb. 11, 1903, c. 544, 32 Stat. 823, as am.; 15 U. S. C. §§ 28 and 29).

QUESTIONS PRESENTED

The questions presented on this appeal are

(1) Whether the order sought to be appealed from is "final" so as to be appealable; and

(2) Whether, if the order is final and appealable, there is any error therein.

STATEMENT OF THE CASE

This cause was commenced by the United States Government on March 6, 1935, by a bill in equity filed in the United States District Court for the District of Delaware against Columbia Gas & Electric Corporation (hereinafter referred to as Columbia Gas), Columbia Oil & Gasoline Corporation (hereinafter referred to as Columbia Oil), and various individual defendants, to restrain an alleged violation of the Federal Anti-trust laws. The bill was amended by the Government by a later bill filed October 30, 1935 (R. 10). Briefly, the bill charged that Columbia Gas

and Columbia Oil, being the corporate defendants, and the several individual defendants, had been and were engaged in a conspiracy to stifle, in the interest of Columbia Gas and in order to prevent competition with Columbia Gas, the independent operation of a natural gas pipe line owned by a company known as the Panhandle Eastern Pipe Line Company (hereinafter referred to as the Panhandle Eastern) (R. 14), projected and partially constructed from the Texas natural gas fields to Indianapolis for the purpose of serving territory in Indiana and adjacent states (R. 13) where Columbia Gas, it was alleged, already had a practical monopoly of sales of natural gas (R. 13); the bill alleged that the Missouri-Kansas Pipe Line Company (the present petitioner, hereinafter sometimes referred to as Mokan or as appellant) owned a half interest in the stock and junior debt of Panhandle Eastern (R. 18, 20), and that the other half interest in the stock and junior debt was owned by Columbia Oil (R. 18, 20), the senior debt being also owned by Columbia Oil (R. 20); that Columbia Oil and Columbia Gas dominated the management of Panhandle Eastern (R. 19, 20) and stifled its sales of gas (R. 24) in order to enable them to acquire the ownership of its line by enforcing their claims as creditors (R. 27); that Panhandle was thus rendered insolvent (R. 24) and Mokan forced into receivership (R. 23). The bill also alleged that Columbia Gas owned all of the preferred stock of Columbia Oil (R. 12) and that the two Columbia Companies were co-conspirators in the alleged infraction of the anti-trust laws. The bill stated that these acts of Columbia Gas and Columbia Oil constituted a conspiracy in restraint of trade in interstate commerce (R. 14) and that it was necessary that Columbia Oil and Columbia Gas divest themselves of any interest in Pan-

handle Eastern in order to enable it to maintain itself in a position where it could freely compete with Columbia Gas (R. 30).

Columbia Gas (R. 109) and Columbia Oil (R. 119) each filed answers denying the allegations of the bill, as did also the individual defendants (R. 109, 119, 128, 132).

The case never came to trial because on January 29, 1936, a Consent Decree was entered (R. 142). The stipulation prefixed to this Decree, signed both by the Government and the defendants, contained the statement that the defendants maintained the truth of their answers filed in the cause and asserted that they had not violated the anti-trust laws but, in order to avoid the expense and disturbance attendant on litigation, were willing to enter into the Consent Decree provided this should not be taken as an admission of previous wrong-doing on their part (R. 138, 139). By the Decree the defendants were restrained (R. 144) from interfering with the independent action of Panhandle Eastern in the production, transportation or sale of gas. Columbia Oil was, however, expressly permitted to retain its stock in Panhandle Eastern (R. 145) and Columbia Gas was expressly permitted (R. 145) to retain its stock in Columbia Oil, although the requirement was made (R. 140) that this stock so held in Columbia Oil should not entitle Columbia Gas to elect more than a minority of the board of directors of Columbia Oil. The Decree required (R. 146) the holdings of Columbia Oil in Panhandle Eastern to be lodged with a Trustee named in the Decree, with power to vote the stock for purposes not inconsistent with the Decree and to elect as directors nominees recommended by the beneficial owner of the stock (Columbia Oil), of which the Trustee should be one, but with the power to remove

such directors and replace them with others of his own choosing if in his judgment such action were necessary in the interests of Panhandle Eastern or to effectuate the purposes of the Decree (R. 146-147). Columbia Oil has been, since the entry of the Decree, the owner of sufficient shares of Panhandle Eastern to be thus permitted to recommend to the Trustee for election six out of nine directors of Panhandle Eastern (R. 502). The Trustee named in the Decree, Mr. Gano Dunn, has continued in office since his appointment from the date of the Decree down to the present date and has voted the stock pursuant to the directions of the Decree; extracts from his semi-annual reports filed with the court in pursuance of the Decree are part of the record (R. 149-274). The Decree also provided that Panhandle Eastern, upon proper application, might become a party thereto for the limited purpose of invoking certain relief to protect it against infractions of the anti-trust laws (R. 149).

Almost three years after the entry of the Decree, on January 12, 1939, the Government filed a Supplemental Complaint (R. 274) asking a modification of the Decree to require, in the alternative, either (1) Columbia Gas to divest itself of its stock in Columbia Oil, or (2) Columbia Oil to divest itself of its stock in Panhandle Eastern (R. 281). After successive extensions of the time to answer, the corporate and the individual defendants filed answers, on May 15, 1939, in opposition to this Supplemental Complaint (R. 322, 326, 313).

In the meantime, on February 6, 1939, Mokan had filed its petition (R. 283) in the District Court to be allowed to intervene in the cause, alleging its interest in a large minority block of Panhandle Eastern common stock which

it held and asking intervention both in its own right and, as does the instant petition, in the right of Panhandle Eastern (R. 307, 308). It asked for very considerable changes in the Decree, including the change that Columbia Gas be required to hold a section of its own line, connecting the Panhandle Eastern line with Detroit, as trustee for the Panhandle Eastern; that the provisions of the Decree which permitted Columbia Oil to own stock of Panhandle Eastern be eliminated; and that Mr. Gano Dunn be removed as trustee (R. 310). The District Court on March 29, 1939, handed down an opinion rejecting this application of Mokan to be allowed to intervene (R. 314), holding that it was not entitled to intervene as a matter of right and should not be allowed to intervene as a matter of discretion. The opinion is reported in 27 Fed. Supp. 116.

The same day, May 15, 1939, on which the defendants answered denying the allegations of the Government's Supplemental Complaint, the Government asked leave to withdraw this Supplemental Complaint (R. 332) and to file an Amended and Supplemental Complaint (R. 333, 334), asking, in effect, to vacate the Consent Decree and to try the original anti-trust case as if there had never been any decree, but preserving the status set by the Consent Decree in the meantime (R. 333). Action on this second Supplemental Complaint has not been pressed by the Government, nor has permission been granted by the Court to file it.

On June 20, 1939, the defendant companies, Columbia Gas and Columbia Oil, in an endeavor to avoid further litigation with the Government, filed in the District Court on their own motion, and not as a responsive pleading to either the Government's Supplemental Complaint of January 12 or its proposed later Amended and Supplemental Complaint of May 15, a proposed Plan (R. 356, 396) providing for the

surrender by Columbia Gas to Columbia Oil of its entire holdings in the stock of Columbia Oil, in return for the transfer by Columbia Oil to Columbia Gas of certain oil and gasoline properties, thus complying in effect with the first of the alternatives (R. 281) contained in the prayer of the Government in the Supplemental Complaint which it had filed on January 12, 1939. The District Court on July 10 referred the consideration of this Plan to a Special Master by an order (R. 371) requiring him to proceed from day to day with the hearing and report to the court with all possible speed.

Shortly after the presentation of this Plan by the defendant companies, Mokan filed with the court on July 5, 1939, a new petition (R. 363) for leave to intervene in the cause, again stating its interest in the stock of Panhandle Eastern and again asking for a change in the existing Decree by requiring Columbia Oil to give up its holdings of Panhandle Eastern stock. The District Court denied this second petition for intervention without opinion by order dated July 10, 1939 (R. 371), stating that this denial was without prejudice to the right of Mokan to be heard as *amicus curiae* on questions of law and fact in regard to the fairness and effectiveness of the proposed Plan. The order of reference of the Plan to the Special Master also specifically required that Mokan be permitted by him to appear at his hearings as *amicus curiae* (R. 372).

Appeals (R. 6 and 410) were taken by Mokan from both orders of the District Court denying intervention to the Circuit Court of Appeals for the Third Circuit, where the appeals were consolidated. The Circuit Court of Appeals held in its opinion handed down December 15, 1939, that it had no jurisdiction of the appeals because of the provisions of the Expediting Act: *Missouri-Kansas Pipe Line Com-*

pany v. *United States et al.*, 108 F. (2d) 614. Certiorari was denied by this Court: *Missouri-Kansas Pipe Line Company* v. *United States et al.*, 309 U. S. 687.

Meanwhile, the Special Master appointed (R. 371) by the District Court on July 10th to hold a hearing and report to the court upon the voluntary Plan proposed by defendants Columbia Gas and Columbia Oil, filed on July 29, 1939, his report (R. 373-396) approving the Plan as appropriate to insure accomplishment of the purposes of the Consent Decree (R. 374, 394). Mokan filed numerous objections to the report of the Master (R. 404). The United States filed no exceptions to the report except to the failure of the Master to find that it was necessary that certain named individuals should dispose of their holdings of stock of Columbia Oil as a condition to putting the Plan into execution (R. 403).

On January 18, 1941, the District Court handed down its opinion confirming the report of the Master in approving the Plan. The Court's opinion is printed in full as Appendix A to this brief. The Court modified the Master's report to meet the exception of the Government above referred to, by requiring that certain individuals dispose of their holdings of Columbia Oil stock as a condition to putting the plan into execution.

On March 23, 1940, a third application to intervene in this cause was purported to be filed by Panhandle Eastern itself (R. 412). The attorneys purporting to represent Panhandle Eastern in such proceeding were the same as those representing Mokan in the instant proceeding; and the relief asked in it is substantially the same as that asked in the instant proceeding. Motions were made by Columbia Gas (R. 426) and Columbia Oil (R. 514) to dismiss

this third application on the ground that it was not properly authorized by Panhandle Eastern and that the attorneys who filed the application were not authorized by Panhandle Eastern to represent it. The District Court granted the motions upon these grounds. Its opinion (R. 520) is reported in 32 Fed. Supp. 474. An appeal from this order is pending in this Court as Case No. 269 of this term.

On April 16, 1940, a fourth, the instant, application (R. 526) was filed by Mokan to intervene in the cause, the application being filed as a stockholder of Panhandle Eastern on behalf of Mokan as such stockholder and all other stockholders similarly situated, to obtain relief for Panhandle Eastern. The court by order of April 23, 1940 (R. 541), denied the application without opinion. However, appellant in its Statement As to Jurisdiction, at page 3 thereof, states that it believes that the opinion of the court of March 29, 1939 (R. 314), denying the first petition to intervene "states the grounds upon which the Court acted in denying the instant application".

Appellant now appeals to this Court from said order of April 23, 1940, denying this fourth application to intervene in this cause.

SUMMARY OF ARGUMENT

POINT I—The application to intervene was defective because, being filed only as a stockholders' bill on behalf of Panhandle Eastern, it did not join Panhandle Eastern as a party. It was therefore correctly denied, and the present appeal should be dismissed, because of failure to join an indispensable party.

POINT II—The order herein sought to be appealed was not final, but interlocutory, and is therefore not appealable.

The petition does not come within the provisions of Rule 24(a) of the Rules of Civil Procedure, governing intervention as of right.

Sections IV and V of the Consent Decree do not give the appellant the right to intervene for the purposes set out in the application.

POINT III—The decision of the District Court denying the petition to intervene was correct.

A. The attempt to intervene was not timely.

B. An individual may not participate in a suit brought under the anti-trust laws by the Attorney General of the United States.

C. Intervention will not be permitted where intervenor seeks to introduce into an action entirely new issues. Specifically, it is well settled that issues of alleged unjust enrichment or private damages may not be introduced into an anti-trust suit brought by the United States Government.

D. It is a settled rule of practice that intervention will not be permitted after entry of the decree, for the purpose of attacking or modifying the same.

POINT IV—The appellant's application was properly denied for the further reason that the order denying its first petition to intervene was conclusive against permitting intervention on the instant petition, inasmuch as this alleges no new facts of substance.

ARGUMENT

POINT I

THE APPLICATION TO INTERVENE WAS DEFECTIVE BECAUSE, BEING FILED ONLY AS A STOCKHOLDERS' BILL ON BEHALF OF PANHANDLE EASTERN, IT DID NOT JOIN PANHANDLE EASTERN AS A PARTY. IT WAS THEREFORE CORRECTLY DENIED, AND THE PRESENT APPEAL SHOULD BE DISMISSED, BECAUSE OF FAILURE TO JOIN AN INDISPENSABLE PARTY.

At the outset of the consideration of this appeal, it is appropriate to call the attention of the Court to a defect in the application to intervene consisting in the failure of the appellant to join an indispensable party, to wit, Panhandle Eastern.

The petition was brought by the appellant solely as a stockholder of Panhandle Eastern and in behalf of that Company to obtain relief to which appellant considered that Panhandle Eastern was entitled (R. 526). It alleges demand made by appellant on Panhandle Eastern to apply for this relief but refusal on the part of Panhandle Eastern to take the action demanded due to alleged domination of Panhandle Eastern by Columbia Oil, one of the appellees herein (R. 538). However, Panhandle Eastern is not joined as a party.

The failure to join Panhandle Eastern as a party is a bar to any proceeding on this application, because Panhandle Eastern was an indispensable party.

In a suit, which a minority stockholder brings on behalf of the corporation, alleging prior demand on the corpora-

tion and refusal of the corporation to act, it is well settled that the corporation is an indispensable party. It is probably superfluous to cite authorities for such an established principle, but, from a multitude of those available, we may cite *Davenport* v. *Dows*, 18 Wall. 626 (1873), where this Court stated the rule as follows (at p. 627):

> "That a stockholder may bring a suit when a corporation refuses is settled in *Dodge* v. *Woolsey* [18 Howard, 340], but such a suit can only be maintained on the ground that the rights of the corporation are involved. These rights the individual shareholder is allowed to assert in behalf of himself and associates, because the directors of the corporation decline to take the proper steps to assert them. Manifestly the proceedings for this purpose should be so conducted that any decree which shall be made on the merits shall conclude the corporation. This can only be done by making the corporation a party defendant. The relief asked is on behalf of the corporation, not the individual shareholder, and if it be granted the complainant derives only an incidental benefit from it. It would be wrong, in case the shareholder were unsuccessful, to allow the corporation to renew the litigation in another suit, involving precisely the same subject-matter. To avoid such a result, a court of equity will not take cognizance of a bill brought to settle a question in which the corporation is the essential party in interest, unless it is made a party to the litigation."

And this Court has stated, in another case involving a minority stockholders suit (*Venner* v. *Great Northern Railway*, 209 U. S. 24, 32 (1908)), that an argument that it is not necessary to join the corporation because the relief prayed for appears on the face of the complaint to be to its

advantage, is of no validity since both the corporation and the defendant against whom actual relief is asked

> "are alleged to have engaged in the same illegal and fraudulent conduct, and the injury is alleged to have been accomplished by their joint action. The plaintiff's controversy is with both, and both are rightfully and necessarily made defendants, * * *"

Hughes, Federal Practice, Vol. 2 § 741 states the rule as follows:

> "But, if a stockholder sues in his own name upon a right of action in the corporation, the latter is an indispensable party."

And to the same effect are other text writers: *Pomeroy on Equity Jurisprudence,* sec. 1095; *Fletcher on Corporations,* Vol. 13, sec. 5997.

In the instant case, inasmuch as the petition is stated to be brought only in the right of Panhandle Eastern, it is consequently fatally defective because of the failure to join the Panhandle Eastern as a party defendant. It might well be that Panhandle Eastern would object to the granting of this intervention application; at any rate its counsel should have a right to be heard on the matter. But inasmuch as it has not been joined as a party it has not this right. Furthermore the appellees herein should be entitled to a judgment which will protect them from further actions of the same sort by other stockholders of Panhandle Eastern, but unless Panhandle Eastern is joined the appellees could be subjected to successive derivative suits brought by other Panhandle Eastern stockholders.

Consequently, for failure to join an indispensable party, if for no other reason, the petition was rightly denied and this appeal should be dismissed.

POINT II

THE ORDER HEREIN SOUGHT TO BE APPEALED WAS NOT FINAL, BUT INTERLOCUTORY, AND IS THEREFORE NOT APPEALABLE.

The general rule is that an order denying intervention is not a final order and hence not appealable except in a limited class of cases where an absolute right to intervene exists. This rule was stated in *United States* v. *California Cooperative Canneries,* 279 U. S. 553 (1929), at p. 556, in connection with an appeal from an order denying to a private party leave to intervene in an equity anti-trust suit brought by the United States Government:

> "The Supreme Court [of the District of Columbia] denied leave to intervene. The Canneries appealed to the Court of Appeals. That Court, so far as appears, did not consider the question whether, in view of the Expediting Act [15 USCA §§ 28, 29] it had jurisdiction on appeal. It did not refer to the decisions which hold that an order denying leave to intervene is not appealable, *In re Cutting,* 94 U. S. 15; *Credits Commutation Co.* v. *United States,* 177 U. S. 311; *Ex Parte Leaf Tobacco Board of Trade,* 222 U. S. 578, 581; *In re Engelhard,* 231 U. S. 646; *City of New York* v. *Consolidated Gas Co.,* 253 U. S. 219; *New York* v. *New York Telephone Co.,* 261 U. S. 312, except where he who seeks to intervene has a direct and immediate interest in a *res* which is the subject of the suit; compare *French* v. *Gapen,* 105 U. S. 509, 524-526; *Smith* v. *Gale,* 144 U. S. 509; *Leary* v. *United States,* 224 U. S. 567; *Swift* v. *Black Panther Oil & Gas Co.,* 244 Fed. 20, 30."

The same statement was made by this Court in another Government equity anti-trust suit brought to dissolve the tobacco monopoly, where an application to intervene by the sellers of leaf tobacco had been denied by the District Court: *Ex parte Leaf Tobacco Board of Trade,* 222 U. S. 578 (1911), where it was stated at page 581:

> "The action of the court below in refusing to permit the movers to become parties to the record is not susceptible of being reviewed by this court on appeal, or indirectly, under the circumstances here disclosed, by the writ of mandamus."

The same general rule applies in all suits. In *Credits Commutation Co.* v. *United States,* 177 U. S. 311 (1900), where this Court affirmed a decision of the Circuit Court of Appeals which had refused to entertain appeals from an order of the Circuit Court denying the petitions of appellants for leave to intervene, it quoted with approval the language of the Court below as follows (pp. 315-6):

> " 'When such an action is taken, that is to say, when leave to intervene in an equity case is asked and refused, the rule, so far as we are aware, is well settled that the order thus made denying leave to intervene is not regarded as a final determination of the merits of the claim on which the intervention is based, but leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding. Such an order not only lacks the finality which is necessary to support an appeal, but it is usually said of it that it cannot be reviewed, because it merely involves an exercise of the discretionary powers of the trial court. * * * It is doubtless true

> that cases may arise where the denial of a third party to intervene therein would be a practical denial of certain relief to which the intervenor is fairly entitled, and which he can only obtain by an intervention. Cases of this sort are those where there is a fund in court undergoing administration to which a third party asserts some right which will be lost in the event that he is not allowed to intervene before the fund is dissipated. In such cases an order denying leave to intervene is not discretionary with the chancellor, and will generally furnish the basis for an appeal, since it finally disposes of the intervenor's claims by denying him all right to relief. The cases at bar, however, are not of that character.' "

That the petition to intervene is filed on behalf of a corporation by a minority stockholder does not vary the rule; it was so decided by this Court in a foreclosure proceeding against a corporation, where the minority stockholder petitioning to intervene to contest the foreclosure alleged a contrary interest in the board of directors and where this Court held that the refusal of the petition was not appealable; *Ex parte Cutting,* 94 U. S. 14, 22 (1876).

The same general rule has been enunciated with unanimity by the Circuit Courts of Appeals. See for instance the words of the Circuit Court of Appeals for the Third Circuit, in *Kennedy* v. *Bethlehem Steel Co.,* 102 F. (2d) 141, 142 (C. C. A. 3rd, 1939):

> "It is settled that an order refusing leave to intervene in a civil action is interlocutory. Not only is it a discretionary order but it leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding."

and the words of the Circuit Court of Appeals for the Tenth Circuit in *Demulso Corporation* v. *Tretolite Co.*, 74 F. (2d) 805, 807 (1934):

> "Petitions of third parties to intervene in pending litigation are generally within the discretion of the trial court, and orders denying the same are not final nor appealable, unless the petitioner has a direct interest in the subject of the suit which may be asserted or protected only by intervention in the pending suit; in that event, his right to intervene is absolute;"

and the words of the Circuit Court of Appeals for the Fifth Circuit in *Burrow* v. *Citizens' State Bank*, 74 F. (2d) 929, 930 (1935):

> "Except in the single instance of the administration in court of a fund in which interveners claim a share, *Bankers' Trust Co.* v. *Virginia Ry. & Power Co.* (C. C. A.) 273 F. 999; *Swift* v. *Black Panther Oil & Gas Co.* (C. C. A.) 244 F. 20, 30, an order denying leave to intervene is a discretionary order. It is not a final order from which an appeal will lie."

The new Rules of Civil Procedure have not changed this rule; see Moore's "Federal Practice under the New Federal Rules" (1938), Vol. 2, page 2332:

> "The main practical difference between absolute and discretionary rights of intervention is that only in the absolute type, will an appeal lie from the order refusing intervention."

Furthermore, if the order appealed from is not final then, in addition to the general rule that it is not appealable

established by the foregoing authorities, the Expediting Act (15 U. S. C. §§ 28, 29) itself prevents an appeal therefrom to any court; see the words of this Court in *U. S.* v. *California Cooperative Canneries Company*, 279 U. S. 553 (1929), at 558, to the effect that the Expediting Act "precluded the possibility of an appeal to either court" (*i. e.*, the United States Supreme Court or the Circuit Court of Appeals), "from an interlocutory decree."

To avoid the rule established by the foregoing authorities, appellant has argued that it was entitled to intervention as of right so as to establish its right to appeal. However, it is clear that appellant had no claim to intervention as of right, and we will now discuss the authorities bearing on this question.

The petition does not come within the provisions of Rule 24(a) of the Rules of Civil Procedure, governing intervention as of right.

The new Rules of Civil Procedure for the District Courts of the United States enumerate in Rule 24 thereof the situations where intervention may be allowed. The enumeration is exclusive and appellant must bring itself within this Rule. The Rule provides for two kinds of intervention: (a) Intervention as of right, and (b) Permissive intervention. In view of the authorities just cited, only the provisions of the Rule applicable to interventions as of right need be considered.

The Rule provides as follows:

> "(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute of the United States

> confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof."

Appellant cannot bring its petition within the provisions of the above rule.

In the first place, the petition is not "timely". This question will be discussed *infra*, pages 34 to 39.

Secondly, it cannot be brought under the three cases enumerated by the rule. These cases are as follows:

> 1. "When a statute of the United States confers an unconditional right to intervene."

This obviously has no application to the petition. There is no such statute involved here.

> 2. "When the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action."

To the extent that appellant seeks to intervene as a member of the general public for the purpose of seeing that the anti-trust laws of the United States are properly enforced and that the Consent Decree is accomplishing the purpose for which it was entered or that it is amended in a proper manner, appellant's interest is adequately represented by the Attorney General who filed a Supplemental Complaint for that purpose (R. 274, 280) and at a later date a motion

to be allowed to vacate the Consent Decree and try the case (R. 333). Surely it cannot be seriously contended by appellant that the Anti-trust Division of the Department of Justice, which has conducted this suit from its inception in 1935 and is vigorously prosecuting it, is not now competent to handle the questions raised by its Supplemental Petition and motion to vacate. The appellant can therefore not bring itself within the language of the rule covering the case "where the representation of applicant's interest by existing parties is or may be inadequate."

To the extent that appellant seeks to intervene to assert or protect rights which are peculiar to it, apart from rights affecting the general public, then, of course, appellant would not "be bound by a judgment in the action" because the assertion of the peculiar rights of appellant would raise issues not now before the Court. The appellant can therefore also not bring itself within the further language of the rule requiring that the intervenor "is or may be bound by a judgment in the action." This was also the view of the District Court in its opinion denying the first of appellant's applications to intervene in this proceeding, which opinion was filed March 29, 1939 (R. 314) and which the appellant in its Statement As to Jurisdiction (p. 3 thereof) says that it believes states the grounds upon which the court acted in denying the instant application, and wherein the court said:

> "Outside this suit Mokan can assert any claim for damages it may have against the defendants or for relief against Dunn for his alleged breaches of trust."

For a recent decision under the new Rules supporting this conclusion we may cite *Palm.* v. *Guaranty Trust Co.*

of New York, 111 F. (2d) 115 (C. C. A. 2nd, 1940), wherein the court affirmed an order below denying a petition to intervene in a mortgage foreclosure action, the petitioners claiming that they were entitled to intervene in order to set up a lien, in the form of rent reserved, upon the mortgaged assets, prior to the lien of the mortgage. The Court, referring to the fact that the petitioners would not be bound by any judgment in the action, inasmuch as even if their claim were valid, a sale under foreclosure would not affect it because the judgment would preserve all prior liens upon the mortgaged property, said at page 116:

> "The case does not fall within Rule 24 (a), Rules of Civil Procedure for District Courts, 28 U. S. C. A. following section 723c, as the petitioners suppose. Concededly no statute gives them an 'unconditional right to intervene', so that subdivision one is eliminated; and subdivision two is equally inapplicable, for they will not be 'bound by a judgment in the action'. Even though their claim should prove valid, the sale has not affected it, for the judgment preserves all prior liens and subjects the buyer's title to them."

In addition, since this subdivision (2) of Rule 24(a) is similar to the equity practice existing prior to the adoption of the Federal Rules, we may also cite as authority the earlier decision of the Circuit Court of Appeals for the Fourth Circuit in *Radford Iron Co. v. Appalachian Electric Power Co.,* 62 F. (2d) 940 (1933) (cert. den. 289 U. S. 748), where the Power Company had brought a proceeding against the Federal Power Commission to set aside the order of the Commission denying to the Power Company permission to construct a dam on the New River. Thereupon the Iron Company petitioned to

intervene, declaring that it was the owner of valuable mineral and timber lands on waters tributary to the New River, and that the construction of the dam would interfere with its right theretofore exercised to transport the ore and lumber from its lands over the waters affected by the dam. Intervention was denied, the court saying, at page 943:

> "There can be no doubt, in view of the decision of *Ford & Son* v. *Little Falls Co.*, 280 U. S. 369, 50 S. Ct. 140, 74 L. Ed. 483, that the legal rights of the iron company will not be prejudiced or foreclosed by any decision in the pending suit to which it is not a party. * * * In short, if the iron company's right is one which might be made the subject of an independent suit, it will not be lost by any action of the court in this case. If, on the other hand, it is of a general character, held in common with the general public, it falls within the class which the Federal Power Commission is clothed with the power and the duty to protect. In either aspect, the appellant is not entitled as of right to intervene in this case."

The words of the Circuit Court of Appeals in the foregoing case may be applied almost verbatim to show that appellant has no right of intervention under clause (2) of Rule 24(a).

> 3. "When the applicant is so situated as to be adversely affected by distribution or other disposition of property in the custody of the court or of an officer thereof."

In the first place, it seems clear, as held by the District Court in its opinion denying the first intervention petition (R. 319), that the shares of Panhandle Eastern stock

owned by Columbia Oil and in the possession of Gano Dunn, the Trustee appointed by the Court under the Consent Decree, are not "in the custody of the court or of an officer thereof" within the contemplation of Rule 24, because Mr. Dunn's duties as a trustee are merely to see that the provisions of the Consent Decree are carried out and to report thereon to this Court. His holding of the stock is only for the purpose of assurance that Columbia Oil, as its owner, is not using its ownership to the detriment of Panhandle Eastern by thwarting the purposes of the Decree. He has no property right in it. By Article III of the Consent Decree (R. 147) he is required to pass on to Columbia Oil all cash dividends received on the stock and to vote the stock as requested by such beneficial owner, provided the purposes and requirements of the Consent Decree are observed.

But quite apart from the question whether Mr. Dunn's holding of the shares of Panhandle Eastern stock as a watchman or a guardian constitutes such shares "property in the custody of the court or of an officer thereof" as required by this provision of Rule 24, it is perfectly clear that appellant will not "be adversely affected by distribution or other disposition of" the property (to quote the requirement of the Rule), because appellant has no property interest in or lien on the stock. The language of Rule 24 contemplates the necessity of the existence in the intervener of some property right in the *res* which is in the custody of the court and which the court is going to dispose of. This rule is a restatement of the long established doctrine of intervention *pro interesso suo,* which by a long line of authorities requires a property right to make it applicable; see Moore's "Federal Practice under the New Federal Rules"

(1938) Vol. 2, pages 2339, 2344 and 2345, commenting on this Rule, where the text reads as follows:

> "What kind of an interest must a petitioner have in property subject to the control of a court before he can claim an absolute right to intervene? Obviously it must be an interest known and protected by the law: a claim of ownership, or a lesser interest, sufficient and of the type to be denominated a lien, equitable or legal.
>
> * * * * * * * *
>
> "When a creditor brings an individual action against a debtor, another creditor will not have an absolute right to intervene. To hold otherwise would be to abandon completely the general notion that a plaintiff may control his action and that an unrepresented petitioner must show a lien interest to support an absolute right of intervention. * * *
> "Where a legal interest in property is lacking, there can be no lien, and hence no absolute right to intervene."

Neither Mokan nor Panhandle Eastern claims any property right in the Panhandle Eastern stock held by Mr. Dunn; this belongs to Columbia Oil and to no one else. Appellant asserts that it is interested in seeing that the Panhandle Eastern stock so owned by Columbia Oil shall be disposed of in various ways, as by the surrender of 80,000 shares for non-voting stock and the cancelation of the voting rights on the Preferred. This, however, is an entirely different thing from a claim to a property right in the stock. No such claim is here made, and such claim must be made in order to bring the petition within the above-cited Rule governing intervention of right. Enforcement of the anti-trust laws is one thing and is a governmental func-

tion, or, if a private party has been injured by an infraction of the anti-trust law, he may have his action for damages in an independent damage suit; but protection of property rights or liens in a specific *res* in the custody of the court is quite another thing and it is to this that subdivision (3) of the part of Rule 24 on intervention of right is addressed. The appellant in this case makes no claim and could make no claim to such a property right or lien.

In support of our conclusion we may cite the recent decision of the United States District Court for the Eastern District of Kentucky, coming up under the new Federal Rules, in the case of *Babcock* v. *Town of Erlanger,* 34 F. Supp. 293 (1940), wherein the court denied a petition by a contractor to intervene in a suit for rescission brought by a purchaser of municipal water works bonds against the municipality, the basis for the suit being misrepresentation and the relief asked including a claim for recovery of moneys already advanced by the purchaser of the bonds. The contractor sought to intervene to ask judgment against the complainant, the purchaser of the bonds, for money expended by him in partial construction of the water works before the complainant announced its refusal to carry out the contract of purchase. The court said in comment on subdivision (3) of Rule 24(a), at page 295:

> "This rule amplifies and restates both at law and in equity the federal practice at the time of its adoption. Washington Institute on Federal Rules, page 67.
>
> "The cases prior to the adoption of the rule are therefore in point on this question. *Radford Iron Co.* v. *Appalachian Electric Power Co.,* 4 Cir., 62 F. (2d) 940; *United States* v. *Houde Engineering Corporation,* D. C., 9 F. Supp. 836, 839.

"I am of the opinion that the proposed pleadings accompanying the motions to intervene do not meet the requirement. * * *

"The position of the interveners is untenable. There is no res in court in which they have an interest. There is no right which they have which would be denied them by a judgment of this court whether in favor of the complainant or defendant. The fund sought to be recovered by the complainant is certainly not a fund in court over which there is litigation within the meaning or contemplation of the rule."

That this reasoning correctly sets forth the meaning of subdivision (3) of Rule 24(a) can not be doubted. It is almost inconceivable that Rule 24 could have been intended, without some affirmative statement to that effect, to change the well-settled principles as to when an intervention may be allowed, so that the intervener be not "adversely affected by distribution or other disposition of property in the custody of the court or of an officer thereof." The purpose of the new rule on intervention is stated by Dean Clark, Reporter to Supreme Court Advisory Committee on the new Rules, found in the recent publication of the American Bar Association entitled "Federal Rules of Civil Procedure; Proceedings of Institute; Washington and New York, 1938", at page 67, where discussing Rule 24 he says: "Intervention is another case where, by stating the rule more in detail, we have tried to cover the existing law without very substantial change, but more by way of clarification." And under the "existing law", that is, the law as it existed prior to the adoption of the new Rules, it is perfectly clear that there would be no intervention as of right in a case such as the present.

Thus this Court in *Smith* v. *Gale,* 144 U. S. 509 (1892), had before it for interpretation the general language of the Dakota Code of Civil Procedure, which stated that "Any person may, before a trial, intervene in any action or proceeding, who has an interest in the matter in litigation, in the success of either party, or an interest against both. * * *" But notwithstanding the general scope of this language, this Court held that it must be construed in the light of existing authorities limiting intervention to cases where a property right was claimed in the subject of the litigation, quoting with approval the following at page 518:

> "'* * * To authorize an intervention, therefore, the interest must be that created by a claim to the demand or some part thereof in suit, or lien upon the property, or some part thereof, in suit, or a claim to or lien upon the property, or some part thereof, which is the subject of the litigation.'"

Similarly, we again refer to the decision of the Circuit Court of Appeals for the Fourth Circuit, cited and digested on page 22 above, in *Radford Iron Co.* v. *Appalachian Electric Power Co.,* 62 F. (2d) 940 (1933) (cert. den. 289 U. S. 748) where the court said at page 943:

> "Even if it should be supposed that the petition for intervention makes out a case of apprehended special damage on the part of the iron company, which would support an independent suit on its part against the power company to secure an injunction to prevent the obstruction of the stream, it does not follow that the iron company would be entitled to intervene in the present suit. * * * It is only when he who seeks to intervene has a direct and immediate interest in a *res,* the subject of the suit, and cannot

otherwise protect his interest, that the right of intervention is absolute, and a denial is the subject of an appeal. *United States* v. *California Canneries*, 279 U. S. 553, 556, 49 S. Ct. 423, 73 L. Ed. 838;"

Attention may also be directed to a recent decision of the Circuit Court of Appeals for the Fifth Circuit: *San Antonio Utilities League* v. *Southwestern Bell Telephone Co.*, 86 F. (2d) 584 (1936) (cert. den. 301 U. S. 682), a case in many respects comparable to the instant case since there had been a consent decree settling the rate controversy between the City of San Antonio and the public utility, which had ordered refunds of collected funds (to secure the refunding of which a bond had been required of the utility by the court) to consumers on a certain basis, and where the petitioner for intervention sought to intervene to question the sufficiency of the refund. The District Court denied the intervention and, on appeal, the appeal was dismissed, the Circuit Court of Appeals saying, at page 585:

"To the thoroughly settled rule that an order denying leave to intervene is not appealable, *In re Cutting*, 94 U. S. 14, 15, 24 L. Ed. 49; *Credits Commutation Co.* v. *United States*, 177 U. S. 311, 20 S. Ct. 636, 44 L. Ed. 782, there is only one substantial exception, that he who seeks to intervene has a direct and immediate interest in a *res* which is the subject of the suit (*citing authorities*). That, generally speaking, individual subscribers have no direct and immediate interest in a rate controversy and suit sufficient to authorize them to maintain or prosecute it, and that the matters involved in such a suit are matters entirely between the parties to it, the Utilities and the City, is settled by the authorities first

above cited. * * * Nothing in appellants' motion takes this case out of the general rule, that the allowance or refusal of a petition to intervene is discretionary, and not a final order from which an appeal will lie."

Sections IV and V of the Consent Decree do not give the appellant the right to intervene for the purposes set out in the application.

The appellant has no greater claim of right to intervene in the right of Panhandle Eastern if reference is made to Sections IV and V of the Consent Decree, on which the brief of appellant in this Court seems mainly to rely. Panhandle Eastern is not a party to the Decree and consequently has no contractual right under these Sections to intervene. The Sections merely constitute a consent by the real parties to the cause that, in the discretion of the Court, Panhandle Eastern may be made a party for certain purposes. And even if this were not a sufficient answer to appellant's argument, these Sections would not support the intervention application in the instant case because they are not directed to such an application. This will appear from a consideration of their terms.

Section V of the Consent Decree provides as follows:

"That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may be-

come a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

The rights conferred upon Panhandle Eastern by Section IV of the Consent Decree so referred to are, quoting therefrom:

> "* * * in the event that Columbia Gas shall, with respect to any contract or any contractual rights of any kind whatsoever or any property held as security or used in connection with any contract, in any way prevent the free transportation, sale, and distribution of gas by Panhandle Eastern, then upon application to this Court or any court of competent jurisdiction Panhandle Eastern shall have the right (1) to the immediate appointment of a trustee to hold such contract rights or property subject to the purposes and provisions of this decree; (2) to immediate specific performance of any and all contracts with Columbia Gas; and (3) to immediate injunction, both temporary and final, as well as any other appropriate remedy at law or in equity, including any remedy hereunder."

The "limited purpose" of such intervention would be, accordingly, only for the purpose of preventing any such property or contract owned by Columbia Gas from being so used by it as to interfere with the free transportation, sale and distribution of gas by Panhandle Eastern in restraint of trade. Specifically, these above-quoted provisions of the Decree are claimed by the appellant to be applicable to the so-called Detroit extension, being the portion of the pipe line owned not by Panhandle Eastern but by Columbia Gas (through its subsidiary Michigan Gas Transmission Corporation) extending from the terminus of the Panhandle Eastern's line at the Illinois-Indiana State line to Detroit,

over which extension the gas must pass to Detroit which originates in Texas and passes through the pipe line of the Panhandle Eastern. If Panhandle Eastern could establish that this extension of the line was being used to prevent the free flow of gas in restraint of interstate commerce, it could, under these Sections IV and V of the Decree, address a petition to the discretion of the Court to be made a party to the cause for the "limited purpose" of preventing such interference with gas operations, and the Court could grant it or refuse such petition in its discretion. But of such "limited purpose" there is not a word in the prayers of the instant application. Its prayers are devoted instead to an endeavor to permanently enrich Panhandle Eastern through a transfer of private property rights, by the prayer that the stock of the Michigan Gas Transmission Corporation, the owner of the Detroit Extension, be turned over to a trustee for Panhandle Eastern to be held as its permanent, private property, subject to a lien in favor of Columbia Gas equal to the cost of constructing the Extension after a money accounting from Columbia Gas in Panhandle Eastern's favor for past profits (R. 539, par. 2); and an endeavor to enrich Mokan in its own right by depriving stock of Panhandle Eastern owned by Columbia Oil of voting rights and thereby increasing the proportionate voting rights of the stock owned by Mokan (R. 539, pars. 3 and 4). There is not a word in the prayers of the petition asking for any specific relief other than these prayers for private enrichment.

Even for such "limited purpose", the above-quoted provision of Section V of the Decree that Panhandle *"upon proper application,* may become a party hereto" shows that Panhandle Eastern's limited right to intervene is not an

absolute one, but is subject to the discretion of the District Court. Panhandle Eastern is not a party to the Consent Decree and cannot rely on any contractual right thereunder to intervene. The effect of the above-quoted provision from Section V that it may "on proper application become a party hereto" is not to give it a vested right but merely to prevent the real parties to the cause from raising the objection, which they could otherwise make, to the injection of a new party into the cause, in case the Court in its discretion should decide to add Panhandle Eastern as a party. Otherwise Panhandle Eastern could delay for many years, as has appellant in this proceeding, permitting appellees to expend large sums of money in reliance upon contracts and arrangements filed with the Court and known to both appellant and to Panhandle Eastern (see pp. 34-36 of this brief below citing the respective pages of the Record) and then claim the right to intervene, as appellant here attempts to do, for the purpose of trying to upset such contracts and arrangements.

It is therefore plain that the petition did not state a claim of intervention as of right so as to bring it within the requirements of any of the three subdivisions of Rule 24(a) of the Rules of Civil Procedure, and that there is likewise no right of intervention conferred by the Consent Decree, and that therefore the order denying the petition was not an appealable order.

We will next discuss under Point III the lack of timeliness in the petition, for, if it was not "timely", it for that reason also did not meet the requirements of law.

POINT III

THE DECISION OF THE DISTRICT COURT DENYING THE PETITION TO INTERVENE WAS CORRECT.

We have devoted the foregoing Point II of this brief to showing that, irrespective of the merits of the decision of the District Court in denying the petition for intervention, the decision is not appealable because the denial was not of a petition for intervention founded on right.

We will now briefly adduce reasons why, in any case, the decision of the District Court in denying the petition to intervene was correct. These reasons will be stated in order as follows:

A. The attempt to intervene was not timely.

The Federal Rule governing interventions (Rule 24), whether as of right (clause a) or permissive (clause b), begins with the requirement that it shall be "upon timely application." This requirement of timeliness is not met in the instant case.

Analysis of the petition shows that all of the specific acts complained of by appellant took place nearly three years prior to the filing of the first petition of appellant to intervene filed on February 6, 1939 (R. 283), and nearly four years prior to the filing of the present petition.

The acts complained of by appellant are:

(1) The acquisition by Columbia Gas of the right to construct the so-called Detroit extension, being the pipe line extending from the terminus of the Panhandle Eastern's pipe line at the Illinois-Indiana boundary to the City of Detroit. This acquisition, as stated in the

petition (par. XIII thereof; R. 531), took place on January 31, 1936, by contract with Panhandle Eastern dated that day. This acquisition and contract was approved under date of February 28, 1936, by Gano Dunn, Trustee, as shown by his report filed in the District Court (R. 161).

(2) The construction and ownership by Columbia Gas of this Detroit extension (Petition, par. XIV; R. 531). This construction (R. 540 D) was completed pursuant to the contract just mentioned, at the cost of several millions of dollars to Columbia Gas (R. 253), before the end of 1936 (R. 155). The operation of this Detroit extension was provided for in a contract between Michigan Gas Transmission Corporation (the subsidiary of Columbia Gas owning the extension) and Panhandle Eastern dated March 17, 1936 (R. 162); and this contract was approved under the same date by Gano Dunn, Trustee, as shown by his report filed in the District Court (R. 219).

(3) The acquisition by Columbia Oil after the entry of the Consent Decree of 80,000 additional shares of Panhandle Eastern Common Stock, to put Panhandle Eastern in funds to reinforce its pipe line to enable it to carry out its contract with Detroit (Petition, par XV; R. 532). This acquisition took place on April 1, 1936 (R. 220). The acquisition was approved by Gano Dunn, Trustee, under date of February 28, 1936, as shown by his report filed in the District Court (R. 268).

(4) The acquisition by Columbia Oil of the Class A and Class B Preferred of Panhandle Eastern (Petition, par. XVIII; R. 535). This acquisition took place

pursuant to contract between Columbia Gas, Columbia Oil and Mokan (represented by its receivers) dated June 1, 1936 (R. 224) and had been agreed to as early as April 22, 1936 (R. 269-274). This contract was an Exhibit (R. 219) to the report of Gano Dunn, Trustee, filed in the District Court for the six months period ended July 29, 1936.

(5) The making of the contract of March 17, 1936, between Panhandle Eastern and Michigan Gas Transmission Corporation providing for the operation by the latter of the Detroit extension (Petition, pars. XX and XXI; R. 535-538). This contract was approved under the same date by Gano Dunn, Trustee, as shown by his report filed in the District Court (R. 219).

All of these matters were of public record and known to appellant at the time of their occurrence, being elaborated in detail in the semi-annual reports of Gano Dunn, Trustee, above referred to, filed in the District Court. They were all approved by Mr. Dunn, as Trustee under the Consent Decree, as shown by the pages of the Record above cited.

They were furthermore all specifically approved by Mokan (acting through its receivers) as a part of the settlement of the civil money damage suit brought by Mokan against Columbia Gas and Columbia Oil which was settled by order of the Delaware Chancery Court in April, 1936, the order of the Chancellor (R. 245) expressly authorizing the acceptance of the settlement offer of Columbia Gas and Columbia Oil which had stated each one of the above five acts as a matter agreed to on which the settlement was to be based (R. 249-267 and 269), and Mokan (represented by its receivers) accepting the offer (R. 244).

In reliance upon these enumerated arrangements and contracts which are now complained of, but concerning which there was not only no complaint at the time they were made but instead actual acquiescence by appellant in their making, appellees have expended many millions of dollars in the acquisition of the shares of stock of Panhandle Eastern and in the construction of the pipe line facilities of the Michigan Gas Transmission Corporation (R. 318). Nearly three years later, appellant filed its first petition (R. 283) on February 6, 1939, wherein, without alleging any reason for the delay, appellant attempted to intervene for the purpose of attacking these very arrangements and contracts and for the purpose of demanding relief which would nullify them. This first petition having been denied, now, nearly four years later than the latest of these acts complained of, the appellant files the instant petition, for the purpose of attacking the same acts and demanding no relief that was not comprised within the prayers of the first petition. It is obvious that in these circumstances the appellant under established rules of equity is guilty of laches. The principle of laches is carried into Rule 24 governing intervention in the United States District Courts, for both subdivisions of this rule require that an application to intervene shall be "timely", in addition to all of the other requirements therein set forth.

For a case so involving timeliness arising under the new Rules we may refer to *American Brake Shoe & Foundry Co.* v. *Interborough Rapid Transit Co.*, 112 F. (2d) 669 (C. C. A. 2nd, 1940), where the court dismissed an application by a bondholder to intervene in a receivership proceeding and in a related foreclosure action for the purpose of contesting the validity of certain bonds of the insolvent

corporation. The application to intervene was filed on September 27, 1939, claiming the right to intervene under both subdivisions of Rule 24. The receivership had commenced in 1932 and the foreclosure proceeding in 1935. The Circuit Court of Appeals said (p. 670):

> "The receivership litigation has been going on since 1932 and the foreclosure action was commenced in 1935. The appellant has taken an active part in court hearings and has been familiar with the situation for years. His application to intervene in September, 1939, can scarcely be deemed timely unless the asserted incompetence or faithlessness of parties representing his interests were recently discovered. This is not the case. He asserted their incompetence and faithlessness at least as early as July 1938 in respect to the very issue he now wishes to raise, namely, the invalidity of the pledged bonds. Instead of acting promptly, he postponed intervention until a plan for settlement of the Interborough's affairs had been drawn up on the assumption that no party to the proceedings was attacking the validity of the pledged bonds. Under these circumcumstances his application to intervene was not timely and his rights under Rule 24(a), if any he had, have lapsed."

Here the situation is similar. The appellant has been familiar with the situation since 1936. Appellant does not even attempt to claim that the acts of which it complains were not known then, at the time of their occurrence, nor could it. In dismissing the first application to intervene the District Court said (R. 318):

> "The new rule above quoted requires that application for intervention be timely. It begins with the

> words 'Upon timely application * * *.' The matters of which petitioner complains,—the acquisition by Columbia Gas of ownership of the Detroit extension, the acquisition by Columbia Oil of class B preferred stock of Panhandle Eastern, the acquisition by Columbia Oil of common stock of Panhandle Eastern in connection with the Detroit financing, and the March 17, 1936 contract,—all took place before June 1, 1936. Columbia Gas and Columbia Oil have spent many millions of dollars carrying out the transactions. Petitioner had full notice and knowledge of all these arrangements prior to their consummation. These details were set out in the offer of settlement made by Columbia Oil and Columbia Gas to Mokan and were accepted by Mokan after full hearing thereon in the court of Chancery of the State of Delaware. Obviously Mokan's application is not a timely one."

If that was true, as it was true, as applied to the first application to intervene, filed almost three years after the occurrence of the acts complained of, it is *a fortiori* true as to the instant application, attacking the same acts, filed almost four years after their occurrence. The present application of the appellant is therefore anything but timely, and was correctly dismissed for that reason alone.

B. An individual may not participate in a suit brought under the anti-trust laws by the Attorney General of the United States.

The sole issue on which the Consent Decree was entered was the issue of the alleged violation of the anti-trust laws. The Department of Justice is the agency, and the only agency, charged with the duty of enforcing the federal anti-

trust laws. A private litigant cannot usurp the duties of the Government as the conservator of the public welfare nor intrude upon the Attorney General when he is enforcing such rights. The petition in the instant case seeks to entitle the appellant to such intrusion.

The impropriety of allowing such intrusion on the part of a private party in a proceeding instituted by the Government under the anti-trust laws has been forcibly brought out in two Federal decisions, the *Northern Securities* case and the *Buckeye Coal-Hocking Valley* case.

In *U. S.* v. *Northern Securiites Co.,* 128 Fed. 808 (C. C. S. D. Minn. 1904), the United States had brought suit against Northern Securities Company charging a violation of the Sherman Act through control by it of the stock of the Northern Pacific and the Great Northern railroad companies. The case went to final decree, which permitted the Securities Company to retain the stock but provided that such retained stock should have no voting rights. Thereupon the directors of the Securities Company formulated a plan for the distribution to its stockholders of shares of both the Northern Pacific and Great Northern. An application for leave to intervene was made by the trustees for the Oregon Short Line Railroad Company, one of the stockholders of the Securities Company, on the ground that the plan would vest a majority of the stock of the Great Northern and the Northern Pacific in the same individuals who cooperated in forming the Securities Company, thereby continuing the common management of the two competing railway companies and rendering the decree ineffectual. The petitioners asked to intervene and obtain further orders to prevent such result. The Court refused the intervention, saying at page 812:

"The United States is the complainant in this case. It is the conservator of the public welfare, and has a right to speak for the public. According to well-established rules, the petitioners cannot intrude into this litigation merely to protect the public interest or as *amici curiae,* so long as the government is present by its attorney general and expresses its disapproval of such intrusion. This would be wresting from the government that control over the litigation, so far as the public is concerned, which it has a right to exercise. The petitioners can intervene only for the protection of their own individual interests, and for that purpose only in the event that they can obtain adequate protection in no other way.

"The United States, speaking by its attorney general, says that it 'neither admits nor denies the allegations of the petition, but objects to the proposed intervention."

In *Buckeye Coal & Ry. Co.* v. *Hocking Valley Ry. Co.,* 269 U. S. 42 (1925), the United States had brought suit against the Hocking Valley Railway Company, other railway companies and certain coal companies, including the Buckeye Coal Company, to dissolve an illegal combination under the Anti-Trust Act. After a hearing a decree was entered ordering the railway companies to part with their interest in the coal companies. The coal lands of the Buckeye Coal Company had been pledged under a mortgage of the Hocking Valley Railway Company and the Coal Company had agreed to pay a certain royalty per ton of coal mined to retire the bonds. Pursuant to the decree, the Hocking Valley Railway Company sold the stocks of the Coal Company to a purchaser under an arrangement which provided that the coal lands were still subject to the mortgage and the Coal Company was still obligated to pay the

royalty. This sale was approved by the Court. Subsequently the Coal Company asked leave, which was granted, to file an intervening petition asking to have the Coal Company released from its obligations under the Railway Company mortgage on the ground that the maintenance of the lien on the coal lands might render the decree ineffective. Thereafter the United States also filed a petition similarly asking that the lien on the coal lands be dissolved and the obligation to pay the royalties be terminated. The District Court denied the application of both the Coal Company and the United States. The Coal Company appealed to this Court but the United States did not. This Court, in disallowing the appeal of the Coal Company, said, at pages 47-9:

> "There is an embarrassment of reasons why the appeal of the two coal companies should fail. * * *
>
> "Third, even if we assume that the United States might apply under the reservation clause to the District Court to direct the cancellation of the mortgage lien on the coal lands and the covenant as to the royalty, on a showing that they were being used to continue the illegal combination condemned in the main decree, it could only be done in the interest of the public represented by the United States. The petition of the United States on this head was denied by the court below, and the United States has taken no appeal.* * *
>
> "* * * The United States, which must alone speak for the public interest, does not appear with them on this appeal. They have therefore no *locus standi*. *United States* v. *Northern Securities Co.*, 128 Fed. 808."

These two cases, the *Northern Securities* case and the *Buckeye Coal-Hocking Valley* case, are squarely in point in

the instant case as authorities requiring the dismissal of the petition for intervention.

A similar conclusion may be deduced from the words of this Court in another Government equity anti-trust proceeding brought to dissolve the tobacco monopoly, where an application to intervene by the sellers of leaf tobacco had been denied by the District Court: *Ex parte Leaf Tobacco Board of Trade,* 222 U. S. 578 (1911); and where their petition to this Court to review the decision of the District Court approving a plan of dissolution was denied, this Court assigning as one of the reasons for its decision that the Government did not join in their petition (page 581):

> "The merely general nature and character of the interest which the movers allege they have in the papers here filed is not in any event of such a character as to authorize them in this proceeding to assail the action of the court below. This is more obvious in this case since the act of the court which is assailed has been accepted by those who are parties to the record."

The rule is similarly stated in Moore's "Federal Practice under the new Federal Rules" (1938), Vol. 2, page 2337, as follows:

> "Representation by the governmental authorities is considered adequate in the absence of gross negligence or bad faith on their part. A taxpayer could not intervene in a bondholders' action brought to have the money paid by the bondholders impounded pending a decision of the state supreme court on the legality of the bond issue. [*Farmers State Bank of New Washington, Ohio* v. *Board of Com-*

missioners of Jensen Bridge District, 295 Fed. 755 (S. D. Fla. 1920).] A subscriber of a telephone company had no absolute right to intervene in a suit by the utility against the city to enjoin the enforcement of rates alleged to be confiscatory, even though the subscriber expressed the apprehension that the city 'may or will relax its attention and energy to the detriment of petitioner and the other subscribers of the company.' [*In re Englehard & Sons,* 231 U. S. 646 (1914)]. Similarly, when a telephone company sued the Public Service Commission to enjoin the enforcement of alleged confiscatory rates, the City of New York had no absolute right to intervene, as the commission adequately represented the city. [*City of New York* v. *New York Telephone Company,* 261 U. S. 312 (1923)] * * *."

From the foregoing authorities it is clear that the District Court did not err in not permitting appellant as a private party to intrude into litigation conducted by the Government for the welfare of the people as a whole under the anti-trust laws.

If there were any doubt on the matter in the instant case, it would be laid to rest by the fact that appellant was permitted (R. 372) to be heard as "*amicus curiae* on questions of law and fact in regard to the fairness and effectiveness" of the proposed Plan filed by the defendant Companies providing for the modifications of the Consent Decree. Surely appellant, as a member of the general public, could not ask for anything more than a day in court and a chance to urge through its attorneys any considerations of fact or law bearing on the fairness of the proposed Plan and the proposed modifications of the Consent Decree. If appellant is not satisfied with this, it must

be because it is desirous of obtaining some private relief for itself and protecting some interest of its own quite apart from itself as a member of the general public. This the authorities do not permit.

C. Intervention will not be permitted where intervener seeks to introduce into an action entirely new issues. Specifically, it is well settled that issues of alleged unjust enrichment or private damages may not be introduced into an anti-trust suit brought by the United States Government.

The sole issue at the institution of this suit between the Government and the defendants was whether the defendants had violated the Anti-trust laws. The defendants denied that they had done so. To obviate the necessity and expense of a protracted litigation, the defendants agreed that they would do or refrain from doing certain things in the future. These things were embraced in the Consent Decree (R. 142) and accompanying Stipulation (R. 138). Subsequently, in January, 1939, the Government brought a Supplemental Complaint (R. 274), asking that either Columbia Gas be ordered to dispose of its stock having present or potential voting rights in Columbia Oil or that Columbia Oil be ordered to dispose of its stock of Panhandle Eastern. This was the only issue before the District Court at the time appellant brought its first intervention petition in February, 1939, and it is still strictly the only issue before the Court, so far as the pleadings are concerned, the defendants having filed their answers denying the allegations of this Supplemental Complaint. In the meantime, between the first intervention petition and the present or third intervention petition, the Government on May 15, 1939, moved for leave to withdraw the January,

1939, Supplemental Complaint (R. 332) and to file a proposed Amended Supplemental Complaint (R. 333) asking, in effect, to vacate the Consent Decree and to try the original anti-trust suit as if there had never been any decree, preserving meanwhile the status set by the Consent Decree. No action has been taken by the District Court upon this later motion of the Government and the filing of this second Supplemental Complaint has not yet been permitted by the Court. On June 20, 1939, defendants Columbia Gas and Columbia Oil filed a motion and voluntary Plan (not directed as a responsive pleading to any previous supplemental complaint) proposing that Columbia Gas give up all of its voting stock in Columbia Oil in return for certain oil and gasoline properties now owned by Columbia Oil, and proposing certain other incidental action (R. 384). This motion and Plan was referred by the Court to a Special Master, who reported in favor of it as a Plan appropriate to carry out the purposes of the Consent Decree (R. 373-396). The Government filed no objections to the Master's Report except as to his failure to require the stock owned by certain individuals in Columbia Oil to be sold; so far as the action to be taken by the corporate defendants is concerned the Government filed no objection (R. 403). On January 18 of this year the District Court handed down its decision (printed as Appendix A to this brief) approving the Plan and the Master's Report with the modifications so requested by the Government.

The foregoing are all the issues which have been raised in this proceeding.

The petition to intervene would inject new issues into the proceeding, to wit (R. 539): (1) whether Columbia Gas should account to Panhandle Eastern for dividends and

profits received from Michigan Gas Transmission Corporation and transfer to Panhandle Eastern as its permanent property the stock of the Michigan Company; (2) whether 80,000 shares of Panhandle Eastern Common Stock owned by Columbia Oil should be surrendered in return for a non-voting security; and (3) whether the Class A and B Preferred Stock of Panhandle Eastern owned by Columbia Oil should be made non-voting.. The determination of these issues, involving, as they do, issues of unjust enrichment and private property rights, would obviously complicate the issues before the Court and delay the determination of the Government's suit and the consummation of the Plan recommended by the Special Master.

This is brought out more clearly by a brief review of the allegations in the petition upon which the prayers for relief just referred to are based. Paragraph XIII of the petition alleges that Columbia Gas has received from Michigan Gas Transmission Corporation and is receiving therefrom "excessive profits" (R. 531) for which the prayer of the petition asks Columbia Gas to account to Panhandle Eastern (R. 539). Paragraph XIV alleges that allocation is made of prices received from the City of Detroit, under a contract between Michigan Gas Transmission Corporation and Panhandle Eastern, "so that an unfair and unreasonable part [of said prices] * * * is paid to and retained by Michigan Gas * * *." (R. 532); and paragraph XXI alleges that under a certain contract dated March 17, 1936, between Panhandle Eastern and Michigan Gas Transmission Corporation, Columbia Gas has exacted from Panhandle Eastern "an unreasonable and unfair price" for gas distributed along the Michigan Gas Transmission line in Indiana, Ohio and Michigan (R. 537); for both of which alleged unjust

profits made by Michigan Gas an accounting in favor of Panhandle Eastern is also asked in the prayer of the petition (R. 539). Though appellant has interwoven in its intervention petition certain allegations to the effect that the foregoing gives Columbia Gas a monopoly of natural gas in Indiana, Ohio and Michigan, the gravamen of the petition is the alleged unjust enrichment of Columbia Gas and Michigan Gas, at the expense of Panhandle Eastern. The relief asked by the petition is, in essence, a transfer of the ownership of private property and a money accounting in favor of Panhandle Eastern against Columbia Gas.

The case of *United States* v. *Radio Corporation of* America, 3 F. Supp. 23 (D. C. Del., 1933), is here squarely in point in showing that intervention by a private party will not be allowed in a government anti-trust suit, for the purpose of prosecuting private claims of a pecuniary nature. An anti-trust suit had been brought by the United States against Radio Corporation, General Electric, Westinghouse and certain other defendants which culminated in the entry of a consent decree. The decree provided that General Electric and Westinghouse should each divest itself of one-half of its shares of Radio Corporation by distributing such shares ratably to its own common stockholders. A stockholder of Radio Corporation petitioned to intervene, alleging that the original consideration given by General Electric and Westinghouse to Radio Corporation in return for the acquisition of its shares by them had been inadequate, and asked that the consent decree be modified so as to permit inquiry to be made regarding the adequacy and fairness of such consideration. The court denied the petition to intervene. The language of the court is so

apposite that it could be applied to the instant case with merely a change of name. The court said at page 25:

> "On what theory can leave to intervene be sustained? Petitioner apparently challenges all the transactions that took place between Radio, General Electric, and Westinghouse, commencing with the agreement of January 1, 1930, under which certain property and exclusive patent rights passed from General Electric and Westinghouse to Radio, and for which Radio issued to General Electric and Westinghouse shares of its stock. The basis of this attack seems to be the question whether Radio received fair and adequate consideration from General Electric and Westinghouse for such shares of stock of Radio, and whether dominance and control was exercised by General Electric and Westinghouse over Radio in this transaction. These inquiries have no relation to the relief sought in the government suit. As stated in Equity Rule 37 (28 U. S. C. A. § 723), intervention shall be 'in subordination to, and in recognition of, the propriety of the main proceeding.' To allow the intervention here sought and embark upon a determination of the questions raised by petitioner would be to import into this case new issues. This cannot be done. *United States* v. *Northern Securities Co.* (C. C.) 128 F. 808. The United States and the public can have no interest in any controversy of Radio Corporation, its stockholders and creditors, against the General Electric and Westinghouse companies. The consent decree terminated what promised to be protracted and burdensome litigation. It was entered in the public interest and met the policy of the statutes. * * *"

The same question was before the court in the *Northern Securities Company* case (128 Fed. 808; p. 40, *supra*),

where, in addition to asking for intervention on the ground that the proposed distribution of the stock of the two railroads by the Securities Company would not carry out the intent of the anti-trust laws, the petitioners also alleged the right to have particular shares of one of the railroads returned to them by the Securities Company and asked to be allowed to intervene in order to establish this private right. But the court held that this private controversy between the stockholders and the Securities Company constituted an issue outside the scope of the original suit, and denied intervention on this ground also, saying (at p. 813):

> "Our conclusion is that the petitioners should not be allowed to intervene and import into the case new issues to be tried. The due enforcement of the decree does not necessitate such action, and if it so happens that the decree of this court in favor of the government creates a situation which shall give rise to controversies between stockholders of the Securities Company as to how the holdings of that company in the two railway companies ought to be distributed, or what should be done with such holdings, these are questions which can be settled among the stockholders themselves, who are more immediately concerned in these questions, and according to these principles of law and equity which any court having general common law and equity powers is competent to enforce."

The analogy between the *Radio* case, the *Northern Securities Company* case and the instant case is evident. In the instant case the Government as protector of the public interest sought a decree which would prevent violation of the anti-trust laws. The Government was and is in no way concerned with disputes as to the correct division of money

profits between the defendant Companies and Panhandle Eastern as long as Panhandle Eastern was and is in a position of free and independent action. The Government and the courts must be free to protect the interests of the Government and of the general public under the anti-trust laws unhampered by whether or not such protection benefits particular private interests.

In its opinion upon the first petition to intervene filed March 29, 1939 (R. 318), the District Court expressly found that the new issues attempted to be injected would depart from the scope of the Government's complaint and involve a serious delay in a determination of the questions raised thereby, saying that "petitioner has no right to encumber the main action which is being conducted by the Attorney General with extraneous issues of a private nature". This is still the case under the instant petition. Indeed the recent approval by the District Court of the proposed Plan of segregation (Appendix A to this brief) makes this even clearer. The trial of these "extraneous issues of a private nature" would impede the putting into effect of this Plan which has been approved by the Government, by the other parties to the cause, by the Special Master and by the District Court as a means to satisfactorily terminating this long and trying litigation.

D. It is a settled rule of practice that intervention will not be permitted after entry of the decree, for the purpose of attacking or modifying the same.

By the statement in its intervention petition that the petition is filed

> "in behalf of [Panhandle Eastern] * * * for relief to which the latter company is entitled under Sections IV and V of the [Consent] Decree * * *"

appellant is no doubt attempting to escape the well-settled rule that intervention will not be permitted for the purpose of attacking or modifying a decree already entered. However, the specific requests for relief (R. 539) conclusively show that appellant is attempting to attack and modify the Consent Decree.

For example, the petition requests in subdivision (a) of the prayers for relief that a trustee be appointed to hold all the stock of Michigan Gas Transmission Corporation for the benefit of Panhandle Eastern, subject only to repayment to Columbia Gas of its actual investment less dividends and profits received in the past. This is clearly contrary to the Consent Decree, which provided in Section IV (R. 148) that the necessary new line to connect the Panhandle Eastern's terminus with Detroit might be financed and built by Columbia Gas. The subsequent provision of Section IV, on which the brief of appellant in this Court mainly relies, that in the event that Columbia Gas shall, with respect to any contract or contractual rights or property used in connection with any contract, in any way interfere with the free transportation, sale and distribution of gas by Panhandle Eastern, Panhandle Eastern shall have the right to the appointment of a trustee to hold such contract rights or property "subject to the purposes and provisions of this Decree", is a provision designed to prevent the use of the property in violation of the anti-trust laws and in violation of the freedom of Panhandle Eastern to operate it independently. It is not a requirement that the property of the Detroit extension shall be turned over to Panhandle Eastern as a matter of private property right and Columbia Gas deprived of all income therefrom. Such beneficial ownership of the Detroit extension by Columbia

Gas is permitted by the portion of the Decree first above referred to, and was approved by Gano Dunn, as Trustee under the Decree (R. 161). Yet the relief asked in this clause (a) would be entirely inconsistent therewith.

Again, the third and fourth subdivisions of the prayers for relief of the petition demand that 80,000 shares of Panhandle Eastern common stock and the two classes of Panhandle Eastern preferred stock, now owned by Columbia Oil, be delivered up in exchange for non-voting securities. This is clearly contrary to Section II of the Decree (R. 145) wherein it is specifically provided that Columbia Oil may

> "own or acquire stock or obligations in Panhandle Eastern and exercise voting rights appurtenant thereto * * * subject to the further terms and provisions of this Decree [i.e., the trusteeship provided for in section III of the Decree]."

There could be no clearer case of attack upon an already entered decree than this. It is not "relief to which [Panhandle Eastern] is entitled under sections IV and V of the [Consent] Decree", but a direct attempt to have the Decree modified.

It seems hardly necessary to cite authority for the proposition that intervention will not be permitted after entry of a decree, for the purpose of vacating or modifying or otherwise impeaching the same; but for a recent statement by this Court we may cite *United States* v. *California Cooperative Canneries,* 279 U. S. 553 (1929), where the Court said (p. 556):

> "* * * It [the Court of Appeals] did not refer to the decisions which hold that an order denying

> leave to intervene is not appealable [citing cases], except where he who seeks to intervene has a direct and immediate interest in a *res* which is the subject of the suit [citing cases]. Nor did it refer to the settled rule of practice that intervention will not be allowed for the purpose of impeaching a decree already made."

in support of which last-quoted sentence the Court (Justice Brandeis delivering the opinion) cited the following authorities in a footnote:

> "See *Forbes* v. *Railroad,* Fed. Cas. No. 4,926; *Coffin* v. *Chattanooga Water & Power Co.,* 44 Fed. 533; *Lombard Investment Co.* v. *Seaboard Mfg. Co.,* 74 Fed. 325, 327; *Land Title & Trust Co.* v. *Asphalt Co. of America,* 114 Fed. 484; *State Trust Co.* v. *Kansas City, etc. Co.,* 120 Fed. 398, 407-408. This rule of practice is embodied in Equity Rule 37. See *Hutchinson* v. *Philadelphia & G. S. S. Co.,* 216 Fed. 795; *Hopkins* v. *Lancaster,* 254 Fed. 190; *Cauffiel* v. *Lawrence,* 256 Fed. 714; *King* v. *Barr,* 262 Fed. 56; *Mueller* v. *Adler,* 292 Fed. 138; *In re Veach,* 4 F. (2d) 334; *Union Trust Co.* v. *Jones,* 16 F. (2d) 236; *Board of Drainage Com'rs* v. *Lafayette Bank,* 27 F. (2d) 286. Compare *Farmers' Loan & Trust Co.* v. *Kansas City R. R.,* 53 Fed. 182, 186; *United States* v. *Northern Securities Co.,* 128 Fed. 808; *Horn* v. *Pere Marquette R. R.,* 151 Fed. 626, 634; *United States* v. *McGee,* 171 Fed. 209; *Jennings* v. *Smith,* 242 Fed. 561, 564; *Adler* v. *Seaman,* 266 Fed. 828."

Appellant has heretofore argued that this is no longer the law, because the former requirement of Equity Rule 37 that "the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding"

has not been carried into the new Rules of Civil Procedure. But this was settled law long before the adoption of former Equity Rule 37, as appears from the citations contained in Justice Brandeis's note just quoted, and there is nothing in the new Rules which states that this "settled rule of practice" is no longer in force. Omission of the new Rules to affirmatively reiterate it cannot be considered as the equivalent of a repeal of such a settled and important rule.

POINT IV

THE APPELLANT'S APPLICATION WAS PROPERLY DENIED FOR THE FURTHER REASON THAT THE ORDER DENYING ITS FIRST PETITION TO INTERVENE WAS CONCLUSIVE AGAINST PERMITTING INTERVENTION ON THE INSTANT PETITION; INASMUCH AS THIS ALLEGES NO NEW FACTS OF SUBSTANCE.

The present application by appellant alleges nothing new of substance which was not comprised in its first application filed February 6, 1939.

From a comparison of the allegations of the two applications it appears:

I. that both in the first application (R. 308; par. XXXIII) and in the present application (R. 526) appellant sought to intervene on behalf of Panhandle Eastern;

II. that both the first application (R. 307, par. XXIX and R. 308, par. XXXIII) and the present application (R. 526, 539) support the claim to intervene by invoking the alleged rights of Panhandle Eastern under Sections IV and V of the Consent Decree;

III. that the acts complained of in the two applications are identical, namely (1) the acquisition by Columbia Gas of the right to construct the Detroit extension (R. 292-293, pars. XIII-XV in first application, and R. 529-531, pars. XI-XIII in present application); (2) the construction, ownership and operation by Columbia Gas of the Detroit extension (R. 293-294, pars. XV-XVII in first application, and R. 531, 532, pars. XIII-XIV in present application); (3) the acquisition by Columbia Oil of 80,000 shares of Panhandle Eastern Common Stock (R. 295, par. XVIII in first application, and R. 532, par. XV in present application); (4) the acquisition by Columbia Oil of the Panhandle Eastern A and B Preferred Stock (R. 300, par. XX in first application, and R. 534-535, par. XVIII in present application); and (5) the making of the March 17, 1936, contract between Panhandle Eastern and Michigan Gas Transmission Corporation providing for the operation of the Detroit extension (R. 301-304, pars. XXI and XXII in first application, and R. 535-538, pars. XX and XXI in present application); and

IV. that the relief asked in both applications is the same or, where different, the later application asks for the lesser relief, to wit: (1) that the Michigan Gas Transmission Corporation be placed in trust for Panhandle Eastern, Columbia Gas to receive only its actual investment less dividends and profits already received (R. 310, pars. *a* and *b* in first application, and R. 539, par. 2 in present application); (2) that 80,000 shares of Panhandle Eastern Common Stock be surrendered to Panhandle Eastern in return for cancelation at cost (R. 310, par. *c* in first application; the present application asks only that the shares be surrendered for a non-voting stock; R. 539, par. 3); and

(3) that the B Preferred Stock of Panhandle Eastern owned by Columbia Oil be canceled at cost and the remainder of Columbia Oil's Panhandle holdings, to wit, the A Preferred and the remainder of its Common Stock, be ordered sold (R. 310, pars. *c* and *d* in first application; the present application asks only that both classes of preferred stock be made non-voting; R. 539, par. 4). In addition, the first application asked that Gano Dunn be removed as Trustee and a new trustee appointed pending divestiture by Columbia Oil of its Panhandle Eastern securities (R. 310, par 3); and the first application also asked that the appellees be adjudged guilty of contempt for failure to comply with the Consent Decree (R. 310, par. 1).

In short, the present application contains no new matter that was not present or included in Mokan's earlier application for leave to intervene.

Furthermore, the objections raised by the Disfrict Court in its opinion denying the first application of February 6, 1939 (R. 314) are applicable to the present application. In fact this seems to be conceded by the appellant, since in its Statement As to Jurisdiction (p. 3 thereof), referring to the opinion of the District Court denying the first application, it states that "petitioner believes it states the grounds upon which the Court acted in denying the instant application".

As shown in Point II (*supra*), the order from which the present appeal is taken is not appealable, because Mokan is not entitled to intervene as of right. But if such order were appealable, then so was the previous order (R. 321) denying Mokan's first application to intervene, and under such circumstances the earlier order, in the absence of any substantial new allegations of facts, is a complete bar to a

second application. This very point was squarely decided in connection with successive intervention applications in *United States Trust Co.* v. *Chicago Terminal T. R. Co.*, 188 Fed. 292 (C. C. A. 7th, 1911), a case involving a receivership of a company, wherein a committee of stockholders filed a petition (their second) for leave to intervene, which the court denied on April 17, 1909; no appeal was taken, but subsequently the stockholders moved for leave to file a third intervening petition; this was also denied on January 5, 1910 and the stockholders appealed from this later order. The appeal was dismissed by the Circuit Court of Appeals on the ground that the denial of the second petition was conclusive against granting the third petition inasmuch as the later petition alleged no new cause of action not comprised in the previous petition. The Court said at pages 299-300:

> "If the order of January 5, 1910, denying leave to intervene, is appealable, it is so because it is a final order or decree against appellants. If so, the order of April 17, 1909, denying leave to intervene, was equally a final order or decree. * * * Suppose a suitor should file an original bill, and the court should decline to hear him and should enter a final decree dismissing the bill for lack of merit on its face. Could such a suitor require the court to hear the same cause of action on a second bill which disclosed the former proceedings and adjudication? We are of opinion that the answer applies to the present case. No inadvertence or mistake, as ground for amendment of the second petition, was advanced. If there had been ground for amendment, the amendment should have been made before the final order was entered. If the ground was not known until afterwards, an application to vacate the final

> order or a petition for review should have been made in the Circuit Court. Without getting rid of that final order by proceedings either in the Circuit Court or on appeal, the stockholders could not thereafter compel a hearing of the same complaint. If that is not so, then appellants might also have ignored the final order of January 5, 1910, and have renewed their application as many times as they pleased."

The language is entirely applicable to the instant case. Mokan could not present its application, from the dismissal of which this appeal is taken, without getting rid of the order denying its first application, either by proper appeal or otherwise. The fact that in the present case Mokan appealed the order denying its first application to the wrong court, ignoring the Expediting Act, does not alter the rule; in the case from the Circuit Court of Appeals just cited, no appeal at all was taken from the first order. The situation is precisely as if Mokan had brought an original bill, which was then dismissed for want of equity, and Mokan were now to seek to bring another bill again on the same facts.

The same result has been reached by two other courts, each denying a second petition of intervention filed for the purpose of asserting the same claim as a first petition of intervention which had been dismissed on the merits, the Court stating that the dismissal of the first petition of intervention constituted a bar to the second: *Manhattan Trust Co.* v. *Trust Co. of North America*, 107 Fed. 328 (C. C. A. 8th, 1901) (cert. den. 181 U. S. 622); *McDonald* v. *Seligman*, 81 Fed. 753 at 759 (C. C. N. D. Cal. 1897).

The fact that the District Court in denying the first application did not in its opinion advert to the claim made by Mokan in behalf of Panhandle Eastern based on Sec-

tions IV and V of the Consent Decree, but placed its opinion on other grounds, does not make the earlier order any the less a bar to this proceeding, for the first application asserted as one of its grounds the alleged right of Panhandle Eastern under Sections IV and V of the Consent Decree (R. 307, par. XXIX, and R. 308, par. XXXIII). It has been conclusively decided by this Court that an issue so asserted in one proceeding operates as a bar to a raising of the same issue between the same parties in a subsequent proceeding even though the opinion of the court dismissing the earlier proceeding did not advert to this issue: *Grubb* v. *Public Utilities Commission of Ohio,* 281 U. S. 470 at 477 (1930). And the decision of *Manhattan Trust Company* v. *Trust Co. of North America,* 107 Fed. 328 (C. C. A. 8th, 1901) (cert. den. 181 U. S. 622), just cited, held the same in a case where the second petition of intervention attempted to justify itself on the ground that, though the pleadings of the first petition of intervention had raised the issue relied on in the second petition, this issue had not been considered in the opinion dismissing the first petition; the court saying (p. 332):

> "Any other rule would make litigation interminable. As long as a party could show that the court, in its opinion, took no notice of one of its alleged grounds for relief, he could file a new bill seeking the same relief sought by his first bill on that ground, and so on as long as any one of the grounds of relief set up in his first bill was not discussed, and in terms decided against him, in the opinion of the court."

These words are exactly applicable to the petition of intervention in the instant case here on appeal.

The application of these principles to the present appeal works no hardship upon appellant. Had appellant been interested in adjudication rather than delay, it would have taken its appeal from the order of March 30, 1939 (R. 321), denying its first intervention application, direct to this Court under the Expediting Act (15 U. S. C. §§ 28, 29), and such appeal under that Act had to be taken within sixty days. Instead appellant filed no notice of appeal whatsoever until June 26, 1939 (R. 6), when it filed its notice with the Circuit Court of Appeals, nearly three months after the entry of the order sought to be appealed. The time for appeal under the Expediting Act to this Court had already expired before any move to appeal was made. In these circumstances appellant cannot claim that it is being deprived of an appeal. The doctrine of *res judicata* was intended to prevent just such interminable litigation as is here being attempted.

CONCLUSION

THE APPEAL SHOULD BE DISMISSED, OR, IF THE COURT CONSIDERS THE APPEAL, THE ORDER OF THE DISTRICT COURT APPEALED FROM SHOULD BE AFFIRMED.

Respectfully submitted,

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APPENDIX A

IN THE

District Court of the United States

FOR THE DISTRICT OF DELAWARE.

UNITED STATES OF AMERICA, *Plaintiff,* v. COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, CHARLES A. MUNROE, THOMAS R. WEYMOUTH, THOMAS B. GREGORY, EDWARD REYNOLDS, JR., BURT R. BAY and JOHN H. HILLMAN, JR., *Defendants.*	No. 1099 In Equity.

Hearing on report of special master recommending approval of a plan of divestiture filed by the defendant corporations and on separate exceptions to the report filed by the United States, by the City of Detroit, and by Missouri-Kansas Pipe Line Company (herein referred to as "Mokan"); and further, for a modification of the consent decree entered in this cause January 29, 1936.

October 30, 1935 the United States filed its amended and supplemental petition, superseding its original petition, charging Columbia Gas & Electric Corporation (herein

referred to as "Columbia Gas"), Columbia Oil & Gasoline Corporation (herein referred to as "Columbia Oil"), and certain individuals with dominating and controlling the management and operation of Panhandle Eastern Pipe Line Company (herein referred to as "Panhandle Eastern") with the purpose and effect of preventing competition, actual and potential, between Panhandle Eastern and Columbia Gas and of monopolizing and attempting to monopolize interstate trade and commerce in natural gas in certain sections of the United States, in violation of the anti-trust laws.

The several defendants filed answers to the petition specifically denying the charges therein.

Columbia Gas is a holding company owning the stock of more than fifty operating public utility subsidiaries engaged in the production, transmission and distribution of natural gas. Their field of operations extended from Muncie, Indiana, through the States of Ohio, Kentucky, West Virginia and Pennsylvania, and to other points on the eastern seaboard. Together, they constituted the "Columbia System". Their operations were concentrated in the State of Ohio where the petition alleges they enjoyed a virtual monopoly in natural, mixed and artificial gas. In 1930 Columbia Oil was organized by Columbia Gas to hold the oil and gasoline producing properties of the Columbia System segregated from its public service properties. In 1928 Mokan was organized for the purpose of producing and distributing natural gas in the States of Kansas and Ohio and intervening states. By 1930 Mokan had acquired substantial gas producing acreage in the Panhandle district of Texas and in Kansas. In December, 1929 Mokan organized Panhandle Eastern for the purpose of building and operating a natural gas pipe line from the sources of supply in Texas and Kansas to Indianapolis, with possible extensions to points in Michigan and Ohio.

CONSENT DECREE

January 29, 1936, pursuant to a stipulation entered into between the Government and the defendants, a consent decree was entered by this court in this cause. The general object of the consent decree was to prevent Columbia Gas from exercising dominion or control, direct or indirect, over the affairs of Panhandle Eastern. To this end elaborate injunctive provisions were inserted in the decree. The decree provided, among other things, that voting stock of Panhandle Eastern then held or afterwards acquired by Columbia Oil was to be placed in the custody of a trustee named in the decree, who was to vote the stock for the election of the number of directors of Panhandle Eastern which the stock was entitled to elect (six out of a total of nine), such directors to include the trustee and the remainder to be selected by him from among persons recommended by Columbia Oil "in conference and with the advice of the trustee", but excluding any past or present officer, director, agent, or employee of Columbia Gas; and the trustee was empowered "to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree". The decree named Gano Dunn as such trustee.

The decree enjoined the defendants from exercising dominion or control over Panhandle Eastern or interfering with its independence of action in the sale of gas, and from owning securities of Panhandle Eastern, subject, however, to the following: The defendants were permitted to own stock of Columbia Gas and Columbia Oil and to be directors and officers thereof; Columbia Gas was permitted to own obligations (without voting rights) of Panhandle Eastern; and Columbia Oil was permitted to own or acquire voting stock or obligations of Panhandle Eastern subject to the trusteeship created by the decree.

The decree further contained provisions applicable to financing the proposed extension of the Panhandle Eastern pipe line to the City of Detroit, Michigan.

The decree further provided for a termination, with the approval of the Court, of the trust created thereunder, when:

(1.) Columbia Gas has divested itself of all control, direct or indirect, of Panhandle Eastern by—.

(a) No longer owning voting stock of Columbia Oil, or

(b) By Columbia Oil divesting itself of ownership of all stock of Panhandle Eastern, or

(2) "Under the circumstances then existing, the continuation of said trust is no longer essential or necessary in carrying out the purposes of this decree."

In addition, the decree provided for a termination of its injunctive provisions, with the approval of the Court, when Columbia Gas no longer owned voting stock of Columbia Oil.

The consent decree was entered pursuant to a stipulation between the parties as above recited. That stipulation required performance by Columbia Gas and Columbia Oil of five or more essential requirements. It is unnecessary to discuss these requirements or to recite the steps taken under the consent decree and stipulation. The working arrangement provided by the consent decree has been carried out from the entry thereof. After the entry of the consent decree the stock of Panhandle Eastern owned by Columbia Oil was promptly lodged with Gano Dunn as Trustee and has continued to be held and voted by him. The Trustee has performed his duties as required by the consent decree.

SUPPLEMENTAL COMPLAINT

January 12, 1939 the United States filed a supplemental complaint in this causing stating, among other things:

"The course of events since the entry of said decree on January 29, 1936, has made it increasingly clear (1) that the only effective way to restore and maintain a position of free and independent action for Panhandle Eastern is to require Columbia Gas to divest itself of all stock of any class having existing or potential voting rights in Columbia Oil, or to require Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern, as contemplated by the last paragraph of section III of said decree, and (2) that to accomplish the purpose of said decree, it is necessary to supplement said decree by a further order requiring the formulation and submission to this Court for approval of a suitable plan or plans to accomplish such divestiture."

After referring to the restrictions found in Section II and the trust established with Gano Dunn in Section III of the consent decree, the supplemental complaint concludes by asking for relief in the alternative through an order of the Court as follows:

"Directing Columbia Gas to divest itself of all control, direct or indirect, legal or practical, of Panhandle Eastern, either by disposing of all interests which it may have in any stock of any class having present or potential voting rights in Columbia Oil, or by causing Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern; and, to that end:

(a) Directing Columbia Oil to proceed straightway to formulate and submit to this Court for approval, through the trustee for sale constituted in accordance with subsection 5 of this section III, a plan for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern;

(b) Directing Columbia Gas to proceed straightway to formulate and submit to this Court for approval, as an alternative to any plan submitted by Columbia Oil pursuant to paragraph (a) of this subsection 4, a plan for the sale or other disposition by it of all interest which it may have in any securities having present or potential voting rights in Columbia Oil."

Defendants Columbia Gas and Columbia Oil filed answers in opposition to the supplemental complaint.

May 15, 1939 the United States filed two motions: (1) For leave to abandon its supplemental complaint filed January 12, 1939, and (2) to vacate the consent decree entered January 29, 1936, and restore the original anti-trust action to the trial calendar upon an amended and supplemental complaint tendered with its motions. Action on these motions was not pressed.

June 20, 1939 defendants filed the voluntary plan of divestiture which is now before the Court, looking to a modification of the consent decree. This plan is substantially the first of the alternatives sought by the Government in its supplemental complaint of January 12, 1939.

July 10, 1939 the plan of divestiture was referred to a special master to "make report to this Court of his findings of fact, conclusions of law and recommendations concerning the said motion and said proposed plan". The order of reference provided that permission be granted to Mokan, then the holder of all of the stock of Panhandle Eastern not owned by Columbia Oil, and to the City of Detroit, Michigan, and to the City of Toledo, Ohio, to appear at the hearing as *amici curiae* but not as intervenors. Mokan and the City of Detroit appeared, cross-examined witnesses, and filed briefs.

July 29, 1939 the special master filed his report with the recommendation:

"The undersigned respectfully recommends, if your Honor should conclude that enlargement of the provisions of the plan dealing with retention of jurisdiction is unnecessary, then that your Honor approve the amended plan and upon approval of the Securities & Exchange Commission to the extent required by law and upon the taking of appropriate corporate action by the stockholders of Oil necessary under Section 6 of the Plan as amended, that the motion of Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation referred to in the order of reference dated July 10, 1939 be granted, that the consent decree herein dated January 29, 1936 be modified as provided in that motion and in accordance with the terms of the proposed plan."

The Court finds that the provisions of the plan respecting the retention of jurisdiction are adequate and an enlargement of those provisions is unnecessary. The plan by its terms is made subject to the approval of the Securities & Exchange Commission and to such corporate action by stockholders of Columbia Oil as may be necessary and appropriate.

PLAN OF DIVESTITURE

Columbia Oil was organized in 1930 as a subsidiary of Columbia Gas to hold oil and gasoline properties of the Columbia System. The business of Columbia Oil and of Columbia Gas was intimately associated. This relation contributed to close operating and personal ties between the two companies.

Columbia Oil has the following securities outstanding: 400,000 shares of participating preferred stock, owned entirely by Columbia Gas, and entitled to elect a minority of directors of Columbia Oil; $21,000,000 principal amount

of twenty-year debentures due in 1956, carrying 6% interest and owned entirely by Columbia Gas; 2,336,826 shares of common stock. The participating preferred stock and debentures were issued to Columbia Gas and their retention was permitted by the consent decree.

The plan provides:

(1) Columbia Gas will surrender to Columbia Oil the 400,000 shares of participating preferred stock of Columbia Oil, being all of the issue of that stock, in exchange for all oil and gasoline properties of Columbia Oil.

(2) Columbia Oil will pay $10,000,000 to Columbia Gas on its debenture indebtedness aggregating $21,000,000. The $10,000,000 is to be raised by Columbia Oil through persons having no connection with Columbia Gas.

(3) Columbia Gas will reduce from 6% to 3% the interest rate on the $11,000,000 of debentures remaining outstanding.

(4) In the event of default upon such remaining debentures, Columbia Gas will not be permitted to acquire ownership or control or be a purchaser in judgment sale of securities of Panhandle Eastern owned by Columbia Oil.

The result of these changes will be: (a) Columbia Gas will own no stock in Columbia Oil and accordingly will possess no voting rights therein; (b) Columbia Oil will hold as its only asset stock of Panhandle Eastern, and all operating relationship with Columbia Gas will terminate; (c) the indebtedness of Columbia Oil to Columbia Gas will be reduced almost one-half; (d) interest payments on the remaining indebtedness will be halved. Thus the influence of Columbia Gas over Columbia Oil will be minimized or removed.

(5) Columbia Gas will grant an option to Panhandle Eastern, for one year from the entry of a final decree approving the plan, to purchase at the actual investment of

Columbia Gas therein the so called Detroit Extension of the Panhandle Eastern pipe line connecting its Eastern terminus with the City of Detroit if Panhandle Eastern buys a gas pipe line of Ohio Fuel Gas Company in Indiana for $355,191. This Detroit Extension is owned by Michigan Gas Transmission Corporation and Indiana Gas Distribution Corporation, wholly owned subsidiaries of Columbia Gas. If, during the year, Columbia Gas receives from sources not connected with it a satisfactory offer to purchase such properties, Panhandle Eastern will have ninety days within which to meet such terms. However, if Panhandle Eastern fails to meet such offer, Columbia Gas shall be free to accept the earlier offer. If no such sale has been made within the one-year period, a trustee shall be appointed to make sale to any purchaser not connected with Columbia Gas for a price not less than the actual investment of Columbia Gas therein, unless Columbia Gas consents to a lesser price. Thus, Columbia Gas parts with the physical link connecting Panhandle Eastern with Detroit.

(6) The following securities of Panhandle Eastern were issued to Columbia Oil pursuant to plans of reorganization and settlement with the Receivers of Mokan: 100,000 shares (the entire issue) of Class A Preferred stock (not entitled to vote for directors); 10,000 shares (the entire issue) of Class B Preferred stock (entitled to elect two directors); and 404,326 shares of common stock of a total of 808,652 shares outstanding.

Columbia Oil has a board of seven directors. The voting rights of the stock it beneficially owns in Panhandle Eastern elects six of the nine directors of Panhandle Eastern. Those directors are elected by the trustee pursuant to the terms of the consent decree. The plan provides that the trusteeship created by the consent decree with respect to voting securities of Panhandle Eastern owned by Columbia Oil shall terminate. Thereupon, all officers

and directors of Columbia Oil and the six directors of Panhandle Eastern elected by the stock of Columbia Oil shall resign; and the directors of Columbia Oil shall own no stock or securities of Columbia Gas. The directors of Columbia Oil shall not include anyone who has ever been an officer, director or employee of Columbia Gas or of any of its subsidiaries. For a period of five years such directors shall not include any person "who shall be objectionable to the Department of Justice". Directors of Panhandle Eastern elected by Columbia Oil shall also be directors of Columbia Oil elected under the plan. Jurisdiction of this cause shall be retained by this Court "for the further purpose of requiring the resignation of any officer or director of Columbia Oil, or any successor thereto, whenever such step may be necessary to effectuate the purposes of the decree". Further, to effectuate said purposes Columbia Oil will take appropriate corporate action to "stagger" its board of directors into three classes elected for terms of one, two, and three years, respectively, with the maximum number permissible by law elected for the longest term.

The foregoing provisions of the plan will create a new slate of directors for Columbia Oil and a new slate of officers to be elected by such new directors. It will also provide a new slate of directors of Panhandle Eastern representing Columbia Oil. All directors elected by Columbia Oil, however, shall have no interest in Columbia Gas or have been an officer, director, or employee of Columbia Gas or any of its subsidiaries. Moreover, such directors must not be objectionable to the Department of Justice. The power continues to reside in this Court to require the resignation of any officer or director of Columbia Oil with the consequent disqualification to serve as a director of Panhandle Eastern representing Columbia Oil "whenever such step may be necessary to effectuate the purposes of the decree".

AMENDMENT OF CONSENT DECREE

To meet the changed conditions resulting from the carrying out of the plan of divestiture, the plan provides for the amendment of the consent decree in the following particulars:

(1) To terminate the Trusteeship of Gano Dunn.

(2) To substitute the following injunctions in lieu of the injunctive provisions contained in Sections II and IV of the consent decree:

(a) Injunctions prohibiting Columbia Gas and the individual defendants from acquiring, owning or voting any securities of Panhandle Eastern, and any securities of Michigan Gas Transmission Corporation if and when Columbia Gas shall have sold its investment therein as contemplated in the plan;

(b) Injunctions prohibiting Columbia Gas from acquiring, owning or voting any securities of Columbia Oil, except that it may continue to own the $11,000,000 of debentures of Columbia Oil and may acquire up to $2,000,000 of additional debentures under existing commitments; also from controlling Columbia Oil or Panhandle Eastern, or Michigan Gas Transmission Corporation if and when its investment therein is disposed of; and

(c) Injunctions prohibiting the individual defendants from acquiring, owning or voting securities of Columbia Oil in addition to those now owned by them, participating in the management of Columbia Oil or of Panhandle Eastern, or participating in the management of Michigan Gas Transmission Corporation if and when the investment of Columbia Gas therein is disposed of as contemplated by the plan.

The plan further provides that the consent decree shall be amended to provide for the sale within five years by Philip G. Gossler of all stock owned by him in Columbia Oil and an injunction against his voting such stock in the interval until it is disposed of.

The Government objects to approval of the plan unless certain blocks of common stock of Columbia Oil "be disposed of by the present holders thereof to other persons having no direct or indirect interest in or connection with Columbia Gas & Electric Corporation on or before the entry of any final order approving the amended plan". These blocks of common stock are:

Holders	*Shares*
The United Corporation and its subsidiary, New York United Corporation	84,769
Philip G. Gossler	65,872
Mrs. Katherine Clay	30,358
E. W. Edwards	25,009
Present officers and directors of Columbia Gas	8,697

Since the Master's report arrangements satisfactory to the Government have been made which eliminate the necessity for any provision relating to United's stock. The United Corporation has agreed to be made a party to this proceeding and that the decree herein prohibit it from voting the stock of Columbia Oil which it owns without the prior approval of this Court except that it may vote such stock for the purpose of a quorum and for the proposed plan.

Gossler was president of Columbia Gas from 1926 until the filing of the Government's petition in October, 1935. He was the chief executive officer of Columbia Gas during the entire period complained of in the petition. He remained president of that company until he assumed his present office of chairman of the board. He was one of the three voting trustees of common stock of Panhandle East-

ern from the time of the creation of such voting trust until September 19, 1935. In 1930 and 1931, when the conspiracy of which the Government complains in its petition had its origin, he was also a director of Panhandle Eastern and a director and president of Columbia Oil. The petition alleges that he was "a central figure, if not the prime mover, in the creation and execution of the conspiracy complained of". He is the largest individual holder of common stock of Columbia Oil, excluding The United Corporation. He is also a substantial holder of common stock of Columbia Gas.

The plan provides that Gossler shall "within five years after the entry of the order approving the Plan, sell all stock now owned by him in Columbia Oil, or any successor thereto, and, in the intervening period so long as he shall own any stock in Columbia Oil, or any successor thereto, shall be enjoined from voting any shares of such stock or suggesting how any shares of such stock owned by any of his relatives should be voted."

It is true that this proposal will neutralize the voting power of Gossler's stock. It does not, however, remove the substantial financial interest he may continue to have for at least five years from the entry of a final decree in Columbia Oil while at the same time remaining chairman of the board and a substantial stockholder of Columbia Gas. The record does not justify a finding that undue hardship would be suffered by Gossler in requiring him to dispose of his stock on or before the entry of a final decree approving the plan. If hardship were entailed, such result must be held an incident of this litigation and a contribution by one of the principal defendants to the accomplishment of the object sought in this proceeding. Final approval of the plan and amendment of the consent decree will be conditioned upon the prior disposal by Gossler to another person or persons having no direct or indirect interest in or connection with Columbia Gas of any and all common stock of Columbia Oil which he may own.

Similar considerations apply to the stock held by officers and directors of Columbia Gas. They should not be interested in voting securities of Columbia Oil.

A different situation, however, exists with respect to the stock of Edwards and of Mrs. Clay, daughter of Gossler. Neither of those persons is a defendant in this cause. The court has no jurisdiction or control over them. Edwards has not been a director of Columbia Gas since 1938. Possibly some agreement may be reached by the parties with respect to the treatment of these two blocks of stock before the time arrives for the entry of a final decree.

Mokan raises the same objections urged by the Government with respect to the stock of the individual stockholders above mentioned. It adds to that list Charles A. Munroe and William P. Philips, voting trustees of the dissolved voting trust of Columbia Oil, and four brokerage firms. Since the dissolution of the voting trust, the voting trustees have not voted stock held by them and have advised the court they will not vote such stock. There is no evidence of any connection between Columbia Gas and any of the four brokerage firms except that a member of one firm is a director of Columbia Gas and another member (now deceased) was formerly a director of Columbia Gas. The owners thereof have the right to direct how their shares shall be voted. The Court has no jurisdiction over them. No order will be made respecting this stock.

The plan of divestiture provides that for a period of five years from the date of the entry of an order approving the plan, the directors of Columbia Oil shall be persons "not objectionable to the Department of Justice". Mokan asserts that such an amendment is illegal under the Laws of Delaware because stockholders of a Delaware corporation may choose as their directors whomsoever they please. Mokan further asserts that the adoption of such an amendment would not bind the dissenting minority.

The charter of Columbia Oil may be amended by its stockholders to provide the qualifications of a candidate for director. Under Delaware law it would be possible by

charter amendment to impose as a qualification of eligibility for a period of five years the requirement that a candidate be not objectionable to the Department of Justice. An amendment to that effect would bind both the majority voting for it and any dissenting minority. Triplex Shoe Co. vs. Rice and Hutchins, 17 Del. Ch. 356. Maddock vs. Vorclone Corp., 17 Del. Ch. 39. Morris vs. American Pub. Utilities Co., 14 Del. Ch. 136.

Irrespective of Delaware law, this court in a Federal anti-trust case has the right to impose such a requirement as to the qualification of directors. Columbia Oil is before the Court as a party. For the purpose of enforcing the anti-trust laws an injunction binding Columbia Oil can also bind its stockholders.

The other objections raised by Mokan to the plan of divestiture have been fully considered by the Court and have been found untenable.

In addition, the City of Detroit objects to the approval of the plan and urges that the plan of divestiture should follow substantially the second of the alternatives sought by the Government in its supplemental pleading, i.e., by causing Columbia Oil to divest itself of ownership of all stock of Panhandle Eastern. The question before the Court, however, is not the relative merits of two plans of divestiture. The question is simply whether the plan before the Court is adequate to meet the requirements for relief under the anti-trust laws. The Government has taken the position that the plan submitted, with certain modifications which this Court has approved, will be effectual to accomplish the relief sought. The City of Detroit has harkened back to a plan of divestiture not developed at the hearings or considered by the special master and not before the Court.

An order in accordance with this opinion may be submitted.

(Sgd.) JOHN P. NIELDS
J

January 18, 1941.

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Supreme Court of the United States

OCTOBER TERM, 1940.

No. 268.

MISSOURI-KANSAS PIPE LINE COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, CHARLES A. MUNROE, THOMAS R. WEYMOUTH, THOMAS B. GREGORY, EDWARD REYNOLDS, JR., BURT R. BAY and JOHN H. HILLMAN, JR.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

BRIEF OF APPELLEE, COLUMBIA OIL & GASOLINE CORPORATION.

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Supreme Court of the United States

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No. 268.

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vs.

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Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

BRIEF OF APPELLEE, COLUMBIA OIL & GASOLINE CORPORATION.

Decisions of the Lower Courts.

This brief is submitted in opposition to the appeal of the appellant, Missouri-Kansas Pipe Line Company, from an order of the District Court of the United States for the District of Delaware, dated April 23, 1940 (R.* 541-542), denying without opinion the application of the appellant

* The Transcript of Record on this appeal will be referred to as "R."

(R. 526-540) for leave to file its application as a derivative stockholder's application on behalf of Panhandle Eastern Pipe Line Company to intervene in an Anti-Trust suit pending in the District Court. That application was the fourth of a series of applications made by the appellant, or by its attorneys purporting to act on behalf of Panhandle Eastern Pipe Line Company, for leave to intervene in that suit. All of these applications have been denied.

The first application was made on February 6, 1939 (R. 283-284), and was denied on March 30, 1939 (R. 321-322), upon an opinion rendered by the court on March 29, 1939 (R. 314-321), which is reported in 27 Fed. Supp. 116. For the convenience of this Court, this opinion is printed at the end of this brief as Appendix A.

The second application for leave to intervene was made on July 5, 1939 (R. 362-363). This application was denied without opinion by the District Court by order dated July 10, 1939 (R. 371). Appeals were taken by the appellant from this order and from the order of March 30, 1939, denying appellant's first intervention application, to the United States Circuit Court of Appeals for the Third Circuit (R. 6). These two appeals, which were consolidated, were dismissed by the Circuit Court on December 15, 1939, the Circuit Court handing down an opinion, which is reported in 108 Fed. (2d) 614. For the convenience of this Court, this opinion is printed at the end of this brief as Appendix B. A petition by appellant to this Court for a writ of certiorari was denied by this Court on April 22, 1940 (309 U. S. 687).

The third intervention application was made on March 23, 1940, in the name of Panhandle Eastern Pipe Line Company (R. 412-424). Upon motions made by the appellees, Columbia Gas & Electric Corporation and Columbia

Oil & Gasoline Corporation for dismissal of that application (R. 426, 514-515), the District Court granted said motions and dismissed the appellant's application (R. 565). That order was entered on April 23, 1940 upon an opinion of the court dated April 6, 1940 (R. 520-526), which held, among other things, that the application had not been authorized by Panhandle Eastern Pipe Line Company. That opinion is reported in 32 Fed. Supp. 474 and, for the convenience of this Court is printed at the end of this brief as Appendix C. Appellant's appeal to this Court from that order is now pending in this Court as case No. 269 and is scheduled for argument at the same time as appellant's appeal No. 268, which is the subject of this brief.

For the sake of brevity, the appellant will sometimes be referred to as "Mokan", the appellee Columbia Gas & Electric Corporation as "Columbia Gas", the appellee Columbia Oil & Gasoline Corporation as "Columbia Oil", Panhandle Eastern Pipe Line Company as "Panhandle Eastern", and Michigan Gas Transmission Corporation as "Michigan Gas".

Questions Involved.

There are two questions involved on this appeal:

FIRST: Has this Court the jurisdiction to consider this appeal?

SECOND: If this Court has jurisdiction to consider this appeal, was the District Court right in denying Mokan's application for leave to file its application as a derivative stockholder's application on behalf of Panhandle Eastern to intervene in the Anti-Trust suit pending in the District Court?

Statement of the Case.*

The Anti-Trust suit was commenced by the United States Government on March 6, 1935, by a bill in equity filed in the United States District Court for the District of Delaware against Columbia Gas, Columbia Oil and the several individual defendants (R. 1). This bill was superseded by the Government's amended and supplemental petition filed October 30, 1935 (R. 10-30), which alleged that the defendants had been and were engaged in a combination and conspiracy in restraint of trade in Interstate Commerce in violation of the Federal Anti-Trust Laws and that pursuant to such combination and conspiracy they had performed numerous acts and deeds which had the effect of preventing Panhandle Eastern from freely and independently engaging in commerce in natural gas in several states; and the Government prayed that the defendants be restrained from exercising any dominion or control over Panhandle Eastern. Columbia Oil (R. 119-128), Columbia Gas (R. 109-119), and the individual defendants (R. 109-119, 119-128, 128-132, 132-138) filed answers denying the material allegations of the amended and supplemental petition.

The case was never tried because on January 29, 1936, a Consent Decree (R. 142-149) was entered upon a stipulation signed by all the parties (R. 138-142), finally adjusting and settling all of the matters in controversy. The stipulation contains the following statement (R. 139):

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* This brief was completed prior to examination of the brief of appellee Columbia Gas on this appeal. On examination of the Statement of the Case in Columbia Gas' brief, we find no difference of substance, and suggest that this Court dispense with the reading of the above Statement if it has already examined the Statement in Columbia Gas' brief. However, we have not eliminated the Statement in this brief for the reason that it may serve the convenience of this Court to have such a statement included herein.

> "The defendants maintain the truth of their answers in this cause and assert that they have not violated the Anti-trust laws in fact or intent, but that they desire to avoid the expense and disturbance necessarily involved in continuing this litigation, and are willing that a consent decree in the form attached hereto and made a part hereof be entered herein, without conceding or admitting the truth of the facts or matters alleged by the petitioner and without any findings of fact, provided that such consent on their part and the entry of said decree shall not constitute or be considered an admission and that the entry of such decree or the decree itself shall not be considered an adjudication that they have violated any law of the United States."

By the Consent Decree the defendants were restrained from exercising any dominion or control over, or in any way interfering with the free and independent action of, Panhandle Eastern (R. 144). Columbia Gas was expressly permitted to own stock in Columbia Oil (R. 145), subject to the requirement contained in the stipulation that such stock would not entitle Columbia Gas to elect more than a minority of the Board of Directors of Columbia Oil (R. 140). The Consent Decree further restrained Columbia Gas from acquiring any stock interest in Panhandle Eastern but expressly permitted Columbia Oil to retain its stockholdings, and acquire additional stockholdings, in Panhandle Eastern (R. 145), subject, however, to the requirement that all such stock be transferred to Mr. Gano Dunn as Trustee, who was vested with supervisory powers, including the power to vote such stock for the election of directors of Panhandle Eastern and on all other matters, and to remove and replace directors, to ensure the effectuation of the purposes of the Consent Decree (R. 146-147). From the time of his appointment up to the present time, Mr.

Dunn has acted in his appointed capacity as Trustee under the Consent Decree (R. 516). The provisions of the Consent Decree require Mr. Dunn to report to the District Court semi-annually (R. 147). His first semi-annual report for the period from January 29, 1936 to July 29, 1936, together with such exhibits thereto as are pertinent to this appeal, are part of the Record (R. 149 *et seq.*).

Pursuant to a provision of the stipulation entered into between the parties upon which the Consent Decree was entered (Stipulation, Section V, Paragraph (c); R. 141), Columbia Oil agreed to make a bona fide offer to the receivers of Mokan* for the settlement of claims asserted by the receivers against the defendants in a suit for triple damages under the Anti-Trust Laws which had been instituted by the receivers against the defendants in the United States District Court for the Southern District of New York. By agreements entered into between Columbia Oil, Columbia Gas and the receivers of Mokan as a result of negotiations for the settlement of the receivers' claims aforesaid (R. 244-245, 249-274), which were approved on April 29, 1936 by the Chancellor of the State of Delaware in the Mokan receivership proceedings (R. 245-248) and which were finally incorporated into a formal written agreement of June 1, 1936, between Columbia Oil, Columbia Gas and the receivers of Mokan (R. 219-236), Columbia Oil received 100,000 shares of Class A and 10,000 shares of Class B preferred stock of Panhandle Eastern (being all the issued and outstanding shares of these classes), and 404,326 shares of the common stock of Panhandle Eastern (being a majority of the issued and outstanding shares of

* During this period the property and assets of Mokan were being administered by receivers appointed by the Delaware Chancery Court.

its common stock). Pursuant to the provisions of the Consent Decree, these shares were immediately transferred to Mr. Dunn as Trustee (R. 150), who has since that time held and voted the same as trustee pursuant to the provisions of the Consent Decree (R. 516). Columbia Oil's beneficially owned stockholdings in Panhandle Eastern remain the same today (R. 429) and carry the right to elect six of the nine directors of Panhandle Eastern (R. 523).

On January 12, 1939, approximately three years after the entry of the Consent Decree, the Government filed in the District Court a supplemental complaint requesting that the Consent Decree be supplemented to require, in the alternative, either (1) that Columbia Gas divest itself of all its stockholdings in Columbia Oil, or (2) that Columbia Oil divest itself of all its stockholdings in Panhandle Eastern (R. 274-283). There is no allegation in this supplemental complaint that any of the defendants have violated any of the provisions of the Consent Decree. The relief requested by the Government was predicated on its interpretation of the provisions of the Consent Decree and the alleged necessity for revising the Decree in a manner to carry out its purposes as thus interpreted. Columbia Oil (R. 326-332), Columbia Gas (R. 322-326), and the individual defendants (R. 326-332, 322-326, 313-314) filed answers denying the material allegations of the supplemental complaint.

In the meantime, on February 6, 1939, Mokan had made its first application for leave to intervene in the Government's suit (this application being filed by Mokan in its own right and also in behalf of and for the benefit of Panhandle Eastern). The petition which Mokan requested leave to file set forth a series of elaborate allegations of alleged violations of the Consent Decree by the defendants and requested substantial alterations and modifications of the

Consent Decree (R. 284-312). Among other things, it asked that the Consent Decree be altered and modified to provide (a) that Columbia Gas be required to hold as Trustee for, and to transfer to, Panhandle Eastern a pipe line owned by Michigan Gas, a wholly owned subsidiary of Columbia Gas, extending from the easterly terminus of Panhandle Eastern's pipe line at the Illinois-Indiana state line to Detroit, Michigan, and that Columbia Gas be directed to account to Panhandle Eastern for the issues and profits of such pipe line, (b) that the provisions of the Consent Decree permitting Columbia Oil to own stock in Panhandle Eastern and Columbia Gas to own stock in Columbia Oil be stricken out and that Columbia Oil be forthwith directed to dispose of all its stock in Panhandle Eastern, and (c) that the Trustee appointed in the Decree be removed (R. 310). The denial of this motion and the subsequent appeals by Mokan have been previously discussed (*supra*, p. 2).

On May 15, 1939, after the defendants had filed their answers to the Government's supplemental complaint, the Government filed a motion (R. 333-334) requesting the District Court to vacate the Consent Decree of January 29, 1936, and to permit the Government to serve and file an amended and supplemental complaint, which was annexed to the motion papers. At the same time the Government moved for the entry of an order permitting the abandonment of its supplemental complaint filed January 12, 1939 (R. 332-333). The Government has not pressed these motions and the Court below has rendered no decisions thereon. Neither has the Court granted permission to serve or file the amended and supplemental complaint.

On June 20, 1939, Columbia Oil and Columbia Gas, in an endeavor to avoid the disturbance and expense attendant upon the continuance of the Government's suit and to bring about a mutually satisfactory and expeditious ad-

justment thereof, filed in the District Court on their own motion a Plan (R. 358-362) providing, among other things, for the surrender by Columbia Gas to Columbia Oil of its entire stockholdings in Columbia Oil in exchange for the transfer by Columbia Oil to Columbia Gas of all the oil and gasoline producing properties of five of Columbia Oil's subsidiary companies. Thus, the Plan in substance complied with one of the alternative prayers for relief contained in the Government's supplemental complaint filed January 12, 1939, which requested the complete divestiture by Columbia Gas of its stockholdings in Columbia Oil. The Plan was part of a motion made by Columbia Oil and Columbia Gas filed with the District Court at the same time, requesting the court to approve the Plan and to modify the Consent Decree to meet the changed conditions which would result from carrying out the plan (R. 356-358).

At this stage of the proceedings Mokan filed its second intervention application on July 5, 1939 (R. 362-363). The intervention petition (R. 363-371) which it requested leave to file did not contain such an elaborate series of allegations as was contained in its first intervention petition. It merely referred to some of the allegations and relief requested in the Government's amended and supplemental petition filed October 30, 1935 and supplemental complaint filed January 12, 1939, and then generally alleged that Columbia Gas and Columbia Oil were still controlling and dominating Panhandle Eastern in violation of the purposes of the Consent Decree and that the carrying out of the Plan proposed by Columbia Oil and Columbia Gas would not fulfill the purposes of the Decree as it would still leave Columbia Gas and Columbia Oil in control of Panhandle Eastern. The petition prayed that the Plan and the motion for its approval be disapproved and denied and that the Consent Decree of January 29, 1936, be altered and modified

by requiring Columbia Oil to divest itself of all its stockholdings in Panhandle Eastern.

In denying Mokan's second application for leave to intervene on July 10, 1939, the District Court expressly provided in its order that Mokan nevertheless might be "heard *amicus curiae* on questions of law and fact in regard to the fairness and effectiveness of the proposed plan * * * and for a modification of the decree entered in this cause, January 29, 1936, and referred to as the 'consent decree'" (R. 371). On the same date the District Court referred the consideration of the Plan and the motion for the approval thereof to a Special Master by an order (R. 371-372) which expressly provided that Mokan and certain others "shall be permitted by the Special Master to appear at the hearings before said Special Master as *amici curiae* but not as intervenors." The subsequent appeals by Mokan from the order denying its second intervention application have been previously discussed (*supra*, p. 2).

Pursuant to the order of reference above-mentioned, hearings on the Plan were held before the Special Master for several days commencing July 14, 1939 and terminating July 20, 1939 (R. 395). At the hearings the Plan was amended by Columbia Oil and Columbia Gas in certain respects not here important (R. 396-397). On July 29, 1939, the Special Master filed his Summary of Plan, Findings of Fact, Conclusions of Law and Recommendations (R. 384-394) and his Opinion (R. 373-384). On August 5, 1939 he filed his Report (R. 394-395). He recommended that the Court approve the Plan as amended at the hearings and grant the motion of Columbia Oil and Columbia Gas for appropriate modification of the Consent Decree (R. 394).

On April 23, 1940, the District Court heard arguments on the motions of Columbia Gas and Columbia Oil to confirm the Special Master's Report and on the objections and exceptions thereto filed by Mokan and others (R. 398-407). On January 18, 1941, the District Court confirmed the Special Master's Report and approved the Plan, as amended at the hearings before the Special Master, with one exception, not here important, which requires certain of the stockholders of Columbia Oil to dispose of their stock. At the hearings before the Special Master, Mokan took advantage of the privilege to appear *amicus curiae* and participated actively in the proceedings, cross examining witnesses, filing briefs, arguing in opposition to the Plan and filing objections to the Special Master's Report (R. 404-406). Mokan also argued in opposition to the Plan, both orally and by briefs, before the District Court on the motion to confirm the Special Master's Report.

On March 23, 1940, about one month prior to the date when this Court denied Mokan's petition for a writ of certiorari to review the decision of the Circuit Court of Appeals dismissing Mokan's consolidated appeals from the orders of the District Court denying the first and second intervention applications (discussed *supra*, p. 2), the third intervention application was made, this time in the name of Panhandle Eastern (R. 412-424). This application contains in substance the same elaborate allegations that were contained in the petition which Mokan sought to file on its first intervention application, except that some of the allegations in the third application have been re-phrased and condensed, but for the most part it is a word-for-word copy of the first petition. The relief requested in the third application is in substance the same as that requested in the first application, except somewhat more limited in scope in that it was made "for the limited purpose of en-

forcing the rights conferred by Section IV of the consent decree entered herein on January 29, 1936, as is provided by Section V of said Consent Decree" (R. 423). The prayers for relief were (a) that a trustee be appointed to hold all the stock of Michigan Gas for the benefit of Panhandle Eastern and that Columbia Gas be ordered to turn over such stock to such trustee; (b) that Mr. Gano Dunn be directed to surrender 80,000 shares of Columbia Oil's beneficially owned common stock in Panhandle Eastern in lieu of the receipt by Columbia Oil and Columbia Gas of some security which would confer no voting rights on Columbia Gas; and (c) that Mr. Dunn as Trustee be directed to vote the remaining common stock and the shares of Class A and Class B preferred stock beneficially owned by Columbia Oil in Panhandle Eastern so that the provisions of such preferred stock might be amended to eliminate its voting powers (R. 423-424). As previously mentioned (*supra,* pp. 2, 3), this application was dismissed by the District Court on the motions of Columbia Oil and Columbia Gas.

On April 16, 1940, about one month later, the fourth intervention application was made by Mokan as a derivative stockholder's application on behalf of Panhandle Eastern (R. 526-540). Except for the formal allegations, the allegations, as well as the prayers for relief, contained in this application are identical word-for-word with those contained in the third application. As previously mentioned (*supra,* pp. 1, 2), this application was denied by the District Court.

POINT I.

This Court should dismiss appellant's appeal on the ground that it has no jurisdiction to review the order appealed from because at the most that order involved the exercise of the discretionary powers of the District Court and is not appealable to this or any other court.

(a) The order appealed from which denied Mokan's fourth intervention application is at the most a discretionary* order of the court below.

Prior to the promulgation of the Federal Rules of Civil Procedure, intervention practice in equity was governed by Equity Rule 37, which provided that "anyone claiming an interest in the litigation may at any time be permitted to assert his right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding." The courts in construing this rule recognized two kinds of interventions: (a) cases in which the absolute right to intervene existed, and (b) cases which were addressed to the discretion of the court. The only cases in which the absolute right to intervene existed were: (a) those in which one claimed a lien upon or an interest in specific property in the exclusive jurisdiction

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* The word "discretionary" as used throughout this brief in referring to intervention applications and orders entered thereon is not used in its strictly accurate sense. For want of a better term and for the further reason that such use conforms to its use in the decisions of the courts, the word "discretionary" as used in this brief includes, except where the context otherwise indicates, applications which the court may in the exercise of its discretion either grant or deny and also applications which, according to accepted principles of law, the court must deny in the exercise of its sound discretion. Thus, "discretionary", as that term is used in this brief, includes all intervention applications and orders entered thereon which do not fall within the class of cases in which the absolute right to intervene, or intervention as of right, exists.

and subject to the exclusive disposition of a court, and his interest therein could be established, preserved or enforced in no other way than by the determination and action of that court,* and (b) those in which the petitioner, not being fairly represented in the litigation, was asserting a right which would be lost or substantially affected if it could not be asserted at that time and in that form** (Hughes Federal Practice, Jurisdiction and Procedure, Vol. 18, §21611, pp. 90-91).

The new Rules of Civil Procedure did not change the distinctions between absolute and discretionary interventions and the characteristics of each which the courts had adopted, but, on the other hand, reduced the then existing principles of law to statutory form in new Rule 24. This rule provides for the same two kinds of intervention: subdivision (a) of this rule, entitled "Intervention of Right," embodying the previously existing principles governing the absolute right to intervene, and sub-division (b), entitled "Permissive Intervention," embodying the previously existing principles governing interventions which were addressed to the discretion of the court. Dean Charles E. Clark, Reporter to the Supreme Court Advisory Committee on the New Rules, now Judge Clark of the Circuit Court of Appeals for the Second Circuit, in discussing the new Rules (Proceedings of the Washington Institute on Fed-

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* *Credits Commutation Company* v. *United States*, 177 U. S. 311, 316.
United States v. *California Cooperative Canneries*, 279 U. S. 553, 556.
Western Union v. *U. S. & Mexican Trust Company*, 221 Fed. 545, 552 (C. C. A. 8th).
Minot v. *Martin*, 95 Fed. 734, 739 (C. C. A. 8th).

** *Whittaker* v. *Brictson Mfg. Co.*, 43 Fed. (2d) 485, 489, (C. C. A. 8th).
Palmer v. *Bankers Trust Co.*, 12 Fed. (2d) 747, 752 (C. C. A. 8th).

eral Rules, held in Washington on October 6-8, 1938, published by the American Bar Association), said with respect to Rule 24 at page 67:

> "Rule 24, Intervention, is another case where, by stating the rule more in detail, we have tried to cover the existing law without very substantial change, but more by way of clarification."

Obviously, if Mokan cannot bring itself within those cases in which the absolute right to intervene (known in new Rule 24(a) as intervention of right) is recognized to exist, then its application at the most is one which is addressed to the discretion of the court (known as permissive intervention under new Rule 24(b)). Therefore, it becomes necessary to determine if Mokan can bring itself within the principles applicable to interventions as of right under new Rule 24(a).

New Rule 24(a) states the principles underlying intervention as of right as follows:

> "INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof."

Clause (1) of the above Rule obviously has no application, as there is no such statute applicable to this case.

Clause (2) refers to cases where the applicant's interest is not adequately represented in the pending suit and the

judgment therein may bind the applicant. It should be noted that both elements—inadequate representation and the binding effect of the judgment—must concur. These same grounds were recognized as a basis for absolute intervention in intervention practice prior to the adoption of the new rules (*supra*, see cases under footnote ** on p. 14).

A cursory examination of the Government's supplemental complaint (R. 274-283) in the action pending in the District Court and Mokan's fourth intervention application (R. 526-540) will disclose that these two elements do not concur in this case. To the extent that Mokan seeks to intervene for the purpose of seeing that the Anti-Trust Laws of the United States are properly enforced, Mokan, like any other member of the general public, is adequately represented by the Attorney General, who is charged under the Anti-Trust Laws with the duty of enforcing them (U. S. C. A., Title 15, Sections 4 and 9). It is settled that where an agency has been appointed by statute to represent the public with respect to the matters involved and such agency is representing the public interest in a suit, a member of the general public is adequately represented in such suit and is not entitled to intervention as of right to litigate in that suit issues affected with a public interest even though partly of a private nature, in the absence of gross negligence or bad faith on the part of the statutory agency in the conduct or defense of the litigation.

In *City of New York* v. *New York Telephone Company*, 261 U. S. 312, the City of New York sought to intervene in a suit which had been instituted by the New York Telephone Company against the members of the New York Public Service Commission and the Attorney General of the State, asking an injunction against the enforcement of

two orders of the Public Service Commission as to telephone rates. By statute, counsel to the Public Service Commission was charged with the duty of representing and appearing for the people of the State of New York in any proceedings involving such questions and the counsel for the Commission had been made a party to the suit. The only interest which the City of New York had in the matter was in the capacity of a subscriber of the Telephone Company. The District Court denied leave to intervene. This Court dismissed the appeal (p. 316), saying:

> "There is nothing in this case to show that the Public Commission will not fully and properly represent the subscribers resident in New York City. Indeed it was said at the bar that the City and the Public Commission and the Attorney General were cooperating in every way in the defense of the suit. It was completely within the discretion of the District Court to refuse to allow the City to become a defendant when its interests and those of its residents were fully represented under the law and protected by those who had been made defendants."

A similar question arose in the case of *In re Engelhard & Sons Company,* 231 U. S. 646, where a telephone subscriber sought to intervene on behalf of himself and others similarly situated in an action which had been brought by the Cumberland Telephone & Telegraph Company against the City of Louisville to enjoin the enforcement of rates established by an ordinance of the City, which were claimed to be confiscatory. In overruling the petitioner's application, this Court held (p. 651):

> "The City was the proper party to make defendant in the suit as representative of all interested, and so throughout the whole proceedings. If we may suppose in a case like the present one there can be a

> distinction between the public interest and private interest, the subscribers of the company being the public, the representation of both interests was adequately fulfilled. It was in consequence of the motion of the city that the telephone company agreed to keep account of charges in excess of the ordinance rates, and, if they should finally be decided to be illegal, to pay into court the excess sums for distribution among its subscribers. It was the representative of all interests to provide for the creation of the fund; it is properly the representative of all interests to see to its proper distribution. This is a necessary deduction from the cases. It is the universal practice, sustained by authority, that the only mode of judicial relief against unreasonable rates is by suit against the governmental authority which established them or is charged with the duty of enforcing them. As was said by Mr. Justice Miller, in *Chicago, Mil., & St. P. Railway Co.* v. *Minnesota,* 134 U. S. 418, 460, it was not competent for each individual having dealings with the regulated company 'to raise a contest in the courts over the questions which ought to be settled in this general and conclusive way.' The rule has been repeated in subsequent cases."

Similarly in the case of *O'Connell* v. *Pacific Gas & Electric Co.,* 19 Fed. (2d) 460, a consumer was denied the right to intervene in certain suits brought by a utility company against a municipality to enjoin the enforcement of a certain ordinance reducing gas rates. The court held that the consumer was adequately represented by the authorities in the suit, even though it appeared that they might compromise their difficulties with the utility company on a less favorable basis than if the suit were prosecuted to final determination.

In the case at bar, the suit pending in the court below is being conducted by the Attorney General, who is charged

with the duty of enforcing the Anti-Trust Laws. He has been active in conducting that litigation. He filed the Government's supplemental complaint and he has vigorously presented the Government's views before the Special Master and before the District Court in the proceedings on the joint plan which was filed by Columbia Oil and Columbia Gas, providing, among other things, for the complete divestiture of Columbia Gas' stockholdings in Columbia Oil. In fact Mokan does not claim that the Attorney General is inadequately representing the interests of the general public in this litigation. Under the above authorities, therefore, Mokan as well as Panhandle Eastern, as members of the general public, are adequately represented by the Attorney General with respect to all issues involved in that litigation.

To the extent that Mokan seeks to intervene to protect such private rights as Panhandle Eastern might claim wholly apart from its rights as a member of the general public, then Mokan would be raising new issues not now before the Court. It is clear that Mokan and Panhandle Eastern would not "be bound by a judgment in the action" with respect to any such private rights because their assertion would raise issues outside the scope of the issues raised in the Government's suit. This same question was raised in *Radford Iron Co., Inc.* v. *Appalachian Electric Power Co.*, 62 Fed. (2d) 940; cert. den. 289 U. S. 748, in which the Radford Iron Co., Inc., which claimed that it was the owner of valuable mineral and timber lands on water tributary to the New River and that their value would be impaired if the waters of that river were impounded by a dam, sought to intervene in a proceeding which the Power Company had instituted against the Federal Power Commission to set aside an order of the Commission denying the Power

Company permission to construct such a dam. In denying intervention, the Court said (62 Fed. (2d) at page 943):

> "There can be no doubt, in view of the decision, of Ford & Son *v.* Little Falls Co., 280 U. S. 369, 50 S. Ct. 140, 74 L. Ed. 483, that the legal rights of the iron company will not be prejudiced or foreclosed by any decision in the pending suit to which it is not a party. * * * In short, if the iron company's right is one which might be made the subject of an independent suit, it will not be lost by any action of the court in this case. If, on the other hand, it is of a general character, held in common with the general public, it falls within the class which the Federal Power Commission is clothed with the power and the duty to protect. In either aspect, the appellant is not entitled as of right to intervene in this case."

Furthermore, Mokan or Panhandle Eastern would not even be entitled to permissive intervention—much less intervention as of right—for the purpose of injecting in the pending Government's suit new issues of a private nature having no relation to the issues tendered by the Government's supplemental complaint. As will hereafter be demonstrated (*infra,* pp. 56 to 59), Mokan by its intervention application seeks to introduce private claims raising wholly extraneous and foreign issues in the Government's suit, and, therefore, in any event the District Court, in the exercise of its sound discretion, was required under accepted standards to deny Mokan's application.

The last subdivision of new Rule 24(a), (Subdivision (3) thereof), refers to those cases where an applicant claims an interest in specific property in the custody of the Court. This basis for intervention as of right was an outgrowth of the old intervention practice in early English Equity, known as an examination *pro interesse suo,* where a party claiming

an interest in property in the control of the court was permitted to establish his claim to or lien upon such property. By judicial construction this principle was recognized in intervention practice under the old Equity Rule 37.

This Court in *United States* v. *California Cooperative Canneries,* 279 U. S. 553, referred to this class of cases as those "where he who seeks to intervene has a direct and immediate interest in a *res* which is the subject of the suit, * * *." In the case of *Credits Commutation Company* v. *United States,* 177 U. S. 311, this Court on page 316 referred to cases in which the right to absolute intervention existed as those "where there is a fund in court undergoing administration to which a third party asserts some right which will be lost in the event that he is not allowed to intervene before the fund is dissipated." In discussing cases of absolute intervention as compared with discretionary cases, the Circuit Court of Appeals for the Eighth Circuit, in the case of *Swift* v. *Black Panther Oil & Gas Co.,* 244 Fed. 20, which has been cited with approval on a number of occasions by this and other courts, said on page 30:

> "In intervention there are two classes of cases—one class in which the intervention is not indispensable to the preservation or enforcement of the claim of the petitioner, and there the permission to intervene is discretionary with the court; another class in which the petitioner claims a lien upon or an interest in specific property in the exclusive jurisdiction and subject to the exclusive disposition of a court, and his interest therein can be established, preserved, or enforced in no other way than by the determination and action of that court. The petitioner, who has a claim of the latter class, has an absolute right to intervene in the proceeding in which the court holds the exclusive custody and dominion of the property, permission for him to intervene is not discretionary

with the court, and he may review by appeal an order refusing that right. (Citations)."

The nature of the interest giving rise to intervention as of right in this class of cases is well set forth by this Court in *Smith* v. *Gale*, 144 U. S. 509, at pages 518-519:

> "These provisions of the Dakota code above cited are found in the codes of several of the States, and appear to have been originally adopted from Louisiana, wherein it is held by the Supreme Court, interpreting a similar section, that the interest which entitles a party to intervene must be a direct interest, by which the intervening party is to obtain immediate gain or suffer loss by the judgment which may be rendered between the original parties. * * * To authorize an intervention, therefore, the interest must be that created by a claim to the demand or some part thereof in suit, or lien upon the property, or some part thereof, in suit, or a claim to or lien upon the property, or some part thereof, which is the subject of litigation."

According to the foregoing authorities, therefore, the nature of the interest which a person must have in order to entitle him to intervention as of right must be a direct and immediate interest in the nature of a property right in some fund or property which is in the exclusive custody of and is being administered by the court.

But Mokan does not claim for itself or for Panhandle Eastern any property right in any property which is being administered by the court below. The only property which is in the possession of Mr. Dunn, the Trustee appointed by the Court under the Consent Decree, is the preferred and common stock beneficially owned by Columbia Oil in Panhandle Eastern. Neither Panhandle Eastern nor Mokan have or claim to have any property right in that stock. It

is admittedly owned by Columbia Oil and the relief which Mokan requests is that some of the common stock be surrendered and cancelled and that the preferred stock be sterilized of voting power. This is not a claim of a property right in such stock upon which Mokan or Panhandle Eastern can assert a right to intervene as of right under subdivision (3) of new Rule 24(a).

In the second place, there is no property or fund in the possession of or being administered by the District Court. The shares of stock of Panhandle Eastern beneficially owned by Columbia Oil in the possession of Mr. Gano Dunn, as Trustee, cannot under any circumstances be construed as being "in the custody of the court or of an officer thereof" within the contemplation of Rule 24(a). This stock is not being administered by the District Court, nor is Mr. Dunn an administrative officer thereof. His duties as Trustee merely contemplate the holding of this stock for the sole purpose of seeing that the provisions and purposes of the Consent Decree are carried out and to ensure Panhandle Eastern freedom from control and domination by Columbia Gas. Although Mr. Dunn technically holds legal title to this stock to effectuate such purposes, he has no property interest in it, the entire ownership being in Columbia Oil. All dividends, except certain stock dividends, must be turned over by him to Columbia Oil and he must even vote the stock held by him as directed by Columbia Oil, provided such directions are not inconsistent with the objects of the Consent Decree (R. 147).

The facts in this case and in the case of *Washburn Crosby Co.* v. *Nee*, 13 Fed. Supp. 751, are not dissimilar. There Washburn Crosby Company brought suit to enjoin the collection of processing taxes on the ground that the taxes were invalid. The company had passed on these taxes to its customers and offered to restore to any cus-

tomer such taxes as he had paid in the event they were adjudged unconstitutional. As a condition to the issuance of a temporary injunction, the court required the Washburn Company to pay the taxes to the clerk of the court. Before the hearing on the permanent injunction, the processing taxes were declared unconstitutional and thereafter the petitioner made his application for leave to intervene claiming that he had paid processing taxes to the petitioner. In denying the application, the court said, at page 755:

> "Every penny of the fund was paid by the plaintiff into the custody of the court and was the property of the plaintiff. No one other than the plaintiff has ever acquired any title to that fund. It was paid into the custody of the court upon the clearly implied condition that if a permanent injunction should be granted it would be repaid to the plaintiff. In no true sense was the fund the subject-matter of the litigation. In no true sense, therefore, was it a fund undergoing administration in the court.
>
> Not only is there no fund here undergoing administration, but the proposed intervener has stated no facts showing that he has any right in the fund, any title, legal or equitable to, or lien upon, any portion of the fund."

While the above cases were decided prior to the adoption of the new Federal Rules of Civil Procedure, it is clear that the principle, requiring a property right in a *res* in the possession of and being administered by the court in order to entitle an applicant to intervention as of right, has not been changed by Subdivision (3) of new Rule 24 (a). This rule provides for intervention as of right "When the applicant is so situated as to be adversely affected by distribution or other disposition of

property in the custody of the court or of an officer thereof". An applicant could not be "adversely affected" under this rule unless he had a property right in a *res*, which is in the custody of the court and which the court is going to dispose of, of the same direct and immediate nature as was decreed necessary to support absolute intervention by the cases decided prior to the new rules. That new Rule 24 (a), Subdivision (3), created no change in the existing law was recognized by the court below when it denied Mokan's first intervention application involving the same facts and substantially the same prayers of relief as are involved in Mokan's fourth application. That decision remains unreversed. *United States* v. *Columbia Gas & Electric Corporation*, 27 Fed. Supp. 116, app. dis. 108 Fed. (2d) 614, cert. den. 309 U. S. 687. In its opinion in that case, the court below said at page 120:

> "This principle found expression in old Equity Rule 37, 28 U. S. C. A. following section 723. The new rule does not specifically set forth the nature of the interest in the property which a person must have in order to establish his claim to intervention as a matter of right. It is improbable that the Supreme Court in promulgating this new rule intended to destroy well established principles as the basis of intervention as of right. It would produce chaos to require the courts to recognize the absolute right to intervention of strangers who had no legal or equitable interest in the subject matter of the action."

There must also be an additional element present to entitle an applicant to intervention as of right, in addition to the requisite property interest in the *res* and the possession of that *res* by the court or an officer thereof. While it is a corollary to the principles hereinabove discussed, that additional element must not be lost sight of in testing

whether the applicant is entitled to intervention as of right. That element is that an applicant is not entitled to intervention as of right if he has available remedies which he may resort to for the protection of his interest outside of the suit in which he is seeking to intervene, so that a denial of his application for intervention will not be tantamount to a denial of relief. This principle was enunciated by this Court in *Credits Commutation Co.* v. *United States*, 177 U. S. 311, at page 316:

> "Cases of this sort" (referring to absolute intervention) "are those where there is a fund in court undergoing administration *to which a third party asserts some right which will be lost in the event that he is not allowed to intervene before the fund is dissipated.*" (Italics ours.)

To the same effect is *Radford Iron Co., Inc.* v. *Appalachian Electric Power Co.*, 62 Fed. (2d) 940, at p. 943, cert. den. 289 U. S. 748:

> "Even if it should be supposed that the petition for intervention makes out a case of apprehended special damage on the part of the iron company, which would support an independent suit on its part against the power company to secure an injunction to prevent the obstruction of the stream, it does not follow that the iron company would be entitled to intervene in the present suit. Indeed the appellant concedes that, if an intervener has substantial rights which he can protect in independent proceedings, he will not usually be permitted to intervene in a suit between other parties, although it may relate to the same subject-matter. In Credits Commutation Company *v.* United States, 177 U. S. 311, 20 S. Ct. 636, 44 L. Ed. 782, it was said that an order denying leave to intervene in an equity cause is not regarded as a final determination of the merits of the claim

on which the intervention is based, but leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding. It is only when he who seeks to intervene has a direct and immediate interest in a *res*, the subject of the suit, *and cannot otherwise protect his interest*, that the right of intervention is absolute, and a denial is the subject of an appeal (Citations)." (Italics ours.)

Swift v. *Black Panther Oil & Gas Co.*, 244 Fed. 20 (C. C. A. 8th), contains a similar holding at page 30:

> "As that one-fourth interest is within the exclusive jurisdiction of the court below in the Wildcat suit, and *as Swift's only remedy to collect the rent reserved in the lease he holds is by an intervention in that suit, the court below cannot justly deny him the right to intervene*, and to secure an adjudication of the merits of his claim therein, while at the same time it denies him, as it has in our opinion rightfully done, the right to enforce his claim outside that court by levy upon and application of the three-fourths interest going to the Panther to the payment of his claim." (Italics ours.)

The same rule is recognized in *Long* v. *Stites*, 63 Fed. (2d) 855, at page 858, cert. den. 290 U. S. 640:

> "Only those cases where the denial of intervention amounts to denial of relief furnish a basis for an appeal."

and also in the case of *Baxter* v. *McGee*, 82 Fed. (2d) 695, at page 698, cert. den. 298 U. S. 680:

> "The ruling of the court" (dismissing the petition of intervention) "was right. It leaves the intervener free to institute such action as he may be advised for the assertion of his alleged rights."

This same rule also applies in cases involving inadequacy of representation. See *Palmer* v. *Bankers' Trust Co.*, 12 Fed. (2d) 747, at page 752:

> "In some cases the facts and circumstances may be such that to deny the intervention would be error on the part of the chancellor; for example, where the *petitioner*, not being already fairly represented in the litigation, *is asserting a right which would be lost or substantially affected if it could not be asserted at that time and in that form.* In such cases the right of intervention is often termed absolute (Citations)." (Italics ours.)

Mokan's application tenders issues entirely extraneous and foreign to the issues tendered by the Government's supplemental complaint in the pending suit in the District Court. They merely raise private controversies with the corporate defendants (*infra*, p. 56 to p. 59). Mokan or Panhandle Eastern may readily assert any claims which they may have for damages against such defendants in an independent proceeding outside of the pending suit. The District Court is not administering and about to dispose of any fund or property in which Mokan or Panhandle Eastern has any rights. Therefore, the denial of Mokan's intervention application will not amount to a denial of relief. The District Court, on the identical facts presented by this case, held, in denying Mokan's first intervention petition, *United States* v. *Columbia Gas & Electric Corporation*, 27 Fed. Supp. 116, at page 121, app. dis. 108 Fed. (2d) 614, cert. den. 309 U. S. 687:

> "Outside this suit Mokan can assert any claim for damages it may have against the defendants or for relief against Dunn for his alleged breaches of trust. Such a right has been recognized by this court."

The foregoing finding stands unreversed.

* * * * * *

Under none of the principles or tests discussed in the foregoing Subdivision (a) of this Point I can Mokan make out a case for intervention as of right. It follows that its fourth intervention application was addressed to the discretion of the court below and that the order of the court below denying such application, was at the most discretionary.

(b) Discretionary orders denying motions for leave to intervene are not final orders and are not appealable to this or any other court.

The courts have consistently held that discretionary orders denying motions for leave to intervene do not have the necessary finality on which to base appeals to any court.

In the leading case on this subject, *Credits Commutation Company* v. *United States*, 177 U. S. 311, this Court, quoting with approval from the opinion of the Circuit Court of Appeals, said at page 315:

> "'When such an action is taken, that is to say, when leave to intervene in an equity case is asked and refused, the rule, so far as we are aware, is well settled that the order thus made denying leave to intervene is not regarded as a final determination of the merits of the claim on which the intervention is based, but leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding. Such an order not only lacks the finality which is necessary to support an appeal, but it is usually said of it that it cannot be reviewed, because it merely involves an exercise of the discretionary powers of the trial court'. . ."

This same principle was recognized in the case of *Central Trust Company* v. *Chicago, Rock Island & Pacific Railroad Company*, 218 Fed. 336 (C. C. A. 2nd), the court saying at page 339:

> "The general rule is that the denial of a petition to intervene is discretionary and therefore not appealable.* * *"

To the same effect is the case of *City of New York* v. *Consolidated Gas Company*, 253 U. S. 219, at page 221:

> "The application was addressed to the discretion of the District Court, and the order appealed from was not of that final character which furnished the basis for appeal (Citations)."

And also the case of *City of New York* v. *New York Telephone Company*, 261 U. S. 312, at pages 316-317:

> "It was completely within the discretion of the District Court to refuse to allow the City to become a defendant when its interests and those of its residents were fully represented under the law and protected by those who had been made defendants.* * * Indeed it was there said" (referring to *City of New York* v. *Consolidated Gas Co.*, 253 U. S. 219) "that an order like the one here objected to was not of such a final character as to furnish the basis of an appeal (Citations)."

See also *Long* v. *Stites*, 63 Fed. (2d) 855, at page 858, cert. den. 290 U. S. 640 (cited, *supra*, p. 27); and *Radford Iron Co., Inc.* v. *Appalachian Electric Power Co.*, 62 Fed. (2d) 940 at page 943, cert. den. 289 U. S. 748 (cited, *supra*, pp. 26-27).

The new Federal Rules of Civil Procedure have not changed the well established principle that a discretionary

order denying leave to intervene is not a final order on which an appeal can be based.

Palmer v. *Guaranty Trust Co. of New York*, 111 Fed. (2d) 115, 117 (C. C. A. 2d);

American Brake Shoe & Foundry Co. v. *Interborough Rapid Transit Co.*, 112 Fed. (2d) 669, 670 (C. C. A. 2d).

Therefore, since the order denying Mokan's fourth intervention application, which is appealed from herein, is at the most discretionary as hereinbefore demonstrated in subdivision (a) of this Point I, it does not have the finality on which to base an appeal to this or any other court, and there is no jurisdiction in this Court to review the matter.

There is no mention in appellant's brief of any principles of intervention practice on which it relies, or that what appellant is seeking to do on behalf of Panhandle Eastern is to intervene in the anti-trust suit pending in the District Court. Likewise, appellant's intervention application does not expressly state that it seeks leave to intervene; it merely requests (R. 539) "That leave be granted to file this application on behalf of Panhandle Eastern in accordance with the terms of said Section V" (referring to the Consent Decree) "and to become a party hereto" (the anti-trust suit) "for the limited purpose of enforcing the rights conferred by Section IV of said Decree". In other words, appellant studiously refrains from using the word "intervention". But the only procedure under the Federal Rules of Civil Procedure which is available to an outsider for the purpose of entering a pending suit as a party on his own initiative is the procedure of intervention prescribed by Rule 24. Mokan cannot seek intervention in the anti-trust suit and avoid compliance

with the requirements of that rule by the simple expedient of calling its application by another name or by refusing to call it by any name at all.

Paragraph V of the Consent Decree upon which the appellant relies expressly provides (R. 149) "that Panhandle Eastern, *upon proper application*, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof" (italics ours). Panhandle Eastern is not a party to the anti-trust suit pending in the District Court. It must make a *proper application* to become a party. Obviously, this means that if Panhandle Eastern desires to become a party to the suit, it must comply with the principles of intervention, and, if it cannot bring its application within the principles of intervention as of right, then its application must be addressed to the discretion of the court. Mokan, in making a derivative stockholder's application on behalf of Panhandle Eastern, must bring itself within the same principles of intervention practice. It cannot claim greater rights than Panhandle Eastern. Since its application does not state a case of intervention as of right, as hereinabove demonstrated, its application must have been addressed to the discretion of the District Court. The District Court, in the exercise of its sound discretion, denied the application, and rightly so, because any application on behalf of Panhandle Eastern must be made for the purpose of enforcing its rights *under the Consent Decree* and not in derogation thereof (See Points IV and V of this brief, *infra*, p. 56 to p. 61). Also Mokan is guilty of laches which, of itself, would be sufficient grounds for the denial of its application (See Point VI of this brief, *infra*, p. 61 to p. 63).

The order of the court below denying Mokan's application, being at the most discretionary, is not appealable, as we have just demonstrated, to this or any other court.

POINT II.

This Court should dismiss appellant's appeal on the ground that it has no jurisdiction to review the order appealed from for the further reason that under the provisions of the Expediting Act, as construed by this Court, no appeal in equity suits under the Federal Anti-Trust Laws wherein the United States is complainant can be taken to this or any other Court from an order which is not a final order.

Prior to the enactment of the Expediting Act, all appeals in equity suits instituted by the United States under the Federal Anti-Trust Laws were first taken to the circuit courts of appeals and then to this Court.

This procedure was changed completely by the above-mentioned Act (U. S. C. A., Title 15, Sections 28-29), which became law on February 11, 1903. This Act consists of two sections. The first section (U. S. C. A., Title 15, Section 28) deals with suits in equity instituted under the Federal Anti-Trust Laws wherein the United States is complainant. The second section (U. S. C. A., Title 15, Section 29) reads as follows:

> "APPEALS TO SUPREME COURT. In every suit in equity brought in any district court of the United States under any of the laws mentioned in the preceding section, wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof. (Feb. 11, 1903, c. 544, Sec. 2, 32 Stat. 823; Mar. 3, 1911, c. 231, Sec. 291, 36 Stat. 1167.)"

The purpose of this enactment was to effect a more speedy disposition of suits in equity instituted by the

United States under the Federal Anti-Trust Laws. In thus construing the purpose of the act, this Court said in *United States* v. *California Cooperative Canneries,* 279 U. S. 553 (1929), at page 558:

> "Congress sought by the Expediting Act to ensure speedy disposition of suits in equity brought by the United States under the Anti-Trust Act. Before the passage of the Expediting Act the opportunities for delay were many. From a final decree in the trial court under the Anti-Trust Act an appeal lay to the Circuit Court of Appeals; and six months were allowed for taking the appeal. From the judgment of the Court of Appeals an appeal lay to this Court; and one year was allowed for taking that appeal. Act of March 3, 1891, c. 517, §§6, 11, 26 Stat. 826, 828, 829. See *United States* v. *E. C. Knight Co.,* 60 Fed. 306; 60 Fed. 934; 156 U. S. 1; *United States* v. *Trans-Missouri Freight Association,* 53 Fed. 440; 58 Fed. 58; 166 U. S. 290. Moreover there might be an appeal to the Circuit Court of Appeals from a decree granting or denying an interlocutory injunction, Act of June 6, 1900, c. 803, 31 Stat. 660."

In the *Canneries* case just referred to; the contention was made that the Expediting Act did not apply to appeals from decrees which were not final decrees and that the circuit courts still had jurisdiction of such appeals. This Court (bottom of p. 557 to top of p. 558) dismissed this argument as "unsound", and then went on to state that the provisions of the Expediting Act, when applied to final decrees in equitable Anti-Trust suits, required appeals from such decrees to be taken direct to this Court, but, when applied to decrees in equitable Anti-Trust suits that were not final decrees, precluded the possibility of taking any appeals from such decrees either to the circuit courts or

to this Court, thereby cutting off any right which had previously existed to take appeals from such decrees to the circuit courts. This Court said at page 558:

> "Thus, Congress limited the right of review" (referring to the provisions of the Expediting Act) "to an appeal from the decree which disposed of all matters, see *Collins* v. *Miller*, 252 U. S. 364; and it precluded the possibility of an appeal to either Court" (referring to the Circuit Court of Appeals and to this Court) "from an interlocutory decree."

This cause in which Mokan seeks to intervene is a suit in equity which was instituted under the Federal Anti-Trust Laws in the District Court of the United States for the District of Delaware, wherein the United States is complainant. Consequently it comes within the class of cases to which the Expediting Act applies. But it is clear that the order appealed from is not a final decree within the meaning of the Expediting Act. It does not dispose of all matters. This is particularly apparent when it is remembered that Mokan is left free to institute an action for damages outside of this suit (*supra*, p. 28). Furthermore, it has heretofore been demonstrated in subdivision (b) of Point I that discretionary orders denying leave to intervene are not sufficiently final for the purpose of any appeal. This same rule has been recognized by this Court in connection with discretionary orders denying leave to intervene in suits in equity under the Federal Anti-Trust Laws in *United States* v. *California Cooperative Canneries*, 279 U. S. 553 at 556:

> "That Court" (the Court of Appeals of the District of Columbia) "* * * did not refer to the decisions which hold that an order denying leave to intervene is not appealable (Citations), except where

> he who seeks to intervene has a direct and immediate interest in a *res* which is the subject of the suit (Citations)."'

The exception referred to in the last cited case, of course, refers to the limited class of cases in which the absolute right to intervene exists. As we have shown in subdivision (a) of Point I, Mokan does not bring its application within this limited class of cases.

In its brief (p. 3) Mokan claims that this Court in the *Canneries* Case and the Circuit Court of Appeals for the Third Circuit in dismissing the order of the District Court denying Mokan's first intervention application (108 Fed. (2d) 614, cert. den. 309 U. S. 687) held that this Court had exclusive jurisdiction of an appeal from an order denying intervention in a suit in equity under the Anti-Trust Laws brought by the Attorney General. We do not so construe the holdings in those cases. They merely hold that the circuit court of appeals (the Court of Appeals of the District of Columbia in the *Canneries* Case) did not have jurisdiction to review such appeals under the Expediting Act. This Court in the *Canneries* Case went on to hold (p. 558) that the Expediting Act precluded the possibility of an appeal either to the circuit courts or to this Court from an interlocutory decree, and (p. 556) that discretionary orders denying leave to intervene likewise were not appealable to any court.

It is quite apparent that the order appealed from, being at the most discretionary, is not appealable to any court, and in addition, under the construction of the Expediting Act adopted by this Court, is likewise not final and, therefore, not appealable either to the Circuit Court of Appeals or to this Court under the provisions of that act.

POINT III.

Even assuming that the order appealed from denying Mokan's fourth intervention application should be construed as a final appealable order, then this Court should nevertheless affirm that order because the order of the District Court denying Mokan's first intervention application would be equally a final appealable order and completely *res judicata* as to all matters on which Mokan's fourth intervention application is based.

It has been demonstrated in Point I hereof that the order denying Mokan's fourth intervention application is not final and not appealable (R. 541-542). If, however, that order should be construed as final, then it follows that the order denying Mokan's first intervention application (R. 321-322), which is similar in all respects to the order denying Mokan's fourth intervention application, has an even greater degree of finality as it remains unreversed and cannot now be appealed from (108 Fed. (2d) 614, cert. den. 309 U. S. 687). The question, therefore, arises whether Mokan is barred and estopped under the well established principles of *res judicata* by the order denying Mokan's first intervention application from maintaining its fourth intervention application. The principles of *res judicata* would apply only if this Court should construe the order denying Mokan's first intervention application as a final order instead of as a discretionary order, since only final orders are *res judicata*. Therefore, for the purpose of this Point III, we shall assume that that order is a final order.

The general rule, which has been universally adopted by the courts in determining whether a final judgment or decree is *res judicata* and operates as an estoppel with re-

spect to a subsequent action in whole or in part, was well stated by this Court in *Baltimore Steamship Company* v. *Phillips*, 274 U. S. 316, which restated the rule enunciated in the leading case of *Cromwell* v. *County of Sac*, 94 U. S. 351, 352-3, as follows at page 319:

> "The effect of a judgment or decree as *res judicata* depends upon whether the second action or suit is upon the same or a different cause of action. If upon the same cause of action, the judgment or decree upon the merits in the first case is an absolute bar to the subsequent action or suit between the same parties or those in privity with them, not only in respect of every matter which was actually offered and received to sustain the demand, but also as to every ground of recovery which might have been presented. But if the second case be upon a different cause of action, the prior judgment or decree operates as an estoppel only as to matters actually in issue or points controverted, upon the determination of which the judgment or decree was rendered. *Cromwell* v. *County of Sac*, 94 U. S. 351, 352-353; *United States* v. *Moser*, 266 U. S. 236, 241."

See also *Moffett* v. *Robbins*, 81 Fed. (2d) 431, 435 (C. C. A. 10th), cert. den. 298 U. S. 675.

To determine whether this rule applies to the case at bar, it becomes necessary to ascertain from an examination of the first intervention application (R. 284-312) and the fourth intervention application (R. 526-540), in the light of the manner in which the courts have construed the rule, whether the same cause of action and the same parties, or their privies, are involved in both applications, and, if the fourth application is based upon a different cause of action, whether the matters in issue on the fourth intervention application were actually at issue and decided by the order denying the first intervention application. Therefore, it

becomes necessary to examine the allegations and prayers for relief in the fourth application as compared with those in the first application.*

The first eight paragraphs of the fourth application are simply formal and introductory. The same comment may be made as to the first nine paragraphs of the first application Paragraphs IX, X, XI, XII, XIII and XIV of the fourth application deal with the execution of the so-called Detroit Contract, the location of Panhandle Eastern's pipe line and its easterly terminus at the time of the execution of the Detroit Contract, the provisions of the Detroit Contract relating to the financing of the re-inforcements to Panhandle Eastern's existing pipe line and of the construction of the so-called Detroit extension, the provisions of the decree relating to such financing and construction, the alleged wrongful construction and ownership through Columbia Gas' wholly owned subsidiary, Michigan Gas, of the Detroit extension, the alleged receipt by Columbia Gas of excessive profits therefrom, the alleged domination by Columbia Gas, by reason of its ownership and operation of the Detroit extension, of natural gas markets in Indiana, southeastern Michigan, western Ohio, and elsewhere, the alleged exclusion of Panhandle Eastern therefrom, and the alleged improper provisions of a contract between Michigan Gas and Panhandle Eastern, providing for an alleged unreasonable allocation as between them of prices received under the Detroit Contract. These same allegations are

* On examination of the analysis of the similarity between the first and fourth intervention applications contained on pages 55-57 under Point IV of Columbia Gas' brief, we find no difference in substance between that analysis and a similar analysis starting in the next paragraph on this page and continuing to page 43 hereof. We, therefore, suggest that this Court dispense with the reading of the analysis contained herein if it has already examined the analysis in Columbia Gas' brief. However, we have not eliminated the analysis in this brief for the reason that it may serve the convenience of this Court to have such an analysis included herein.

contained in paragraphs X, XI, XII, XIV, XV and XVI of the first application in the same order and almost word-for-word.

Paragraph XV of the fourth application complains of the alleged wrongful acquisition by Columbia Oil of an additional 80,000 shares of the common stock of Panhandle Eastern in connection with the furnishing of funds to Panhandle Eastern to finance the re-inforcements to its pipe line, the alleged control by Columbia Oil of a majority of the Board of Directors of Panhandle Eastern, and the alleged willingness of Mr. Dunn, the Trustee under the Consent Decree, to carry out the wishes of Columbia Oil and Columbia Gas. For the most part these identical allegations may be found in paragraph XVIII of the first application, the remaining allegations of paragraph XV of the fourth application being a condensation of the same substance alleged in more detail in paragraphs XX, XXIV and XXVI of the first application.

Paragraphs XVI, XVII, XVIII and XIX of the fourth application deal with the alleged control by Columbia Gas of the business and affairs of Columbia Oil, the alleged use of such control by Columbia Gas to cause Columbia Oil to join in a combination and conspiracy in violation of the Anti-Trust Laws, the alleged failure of the Consent Decree to terminate the control by Columbia Gas through Columbia Oil of Panhandle Eastern, the alleged impropriety of the issue to Columbia Oil of 100,000 shares of Class A and 10,000 shares of Class B preferred stock of Panhandle Eastern and of the alleged improper provisions thereof, particularly the provisions of the Class B stock, and the transfer by Columbia Oil to Mr. Dunn, as Trustee under the Consent Decree, of the Class A and Class B preferred stock and the additional shares of common stock of Panhandle Eastern. The same substance in a more elaborate

form is contained in paragraphs XIX, XXV, XXVI, XX and XXXII of the first application.

Paragraphs XX and XXI of the fourth application complain of the execution of the March 17, 1936 agreement between Michigan Gas and Panhandle Eastern, of certain of the provisions of said agreement, and of the alleged purposes, intent and effect of that agreement. The same allegations almost word-for-word are contained in paragraphs XXI and XXII of the first application. Paragraph XXII of the fourth application is purely formal and deals with the efforts of Mokan to have Panhandle Eastern make this application and its alleged refusal and reasons therefor.

The prayers for relief in the fourth application are substantially the same as the prayers contained in the first application, except somewhat more limited in scope. The prayers contained in paragraphs (1) and (5) of the fourth application are merely formal in nature. The prayer contained in paragraph (2) is that a trustee be appointed to hold all the stock of Michigan Gas and dividends thereon for the benefit of Panhandle Eastern and that Columbia Gas transfer such stock and all its interest in Michigan Gas to said trustee. A corresponding prayer is contained in subparagraphs (a) and (b) of paragraph 2 of the first application, which provides that Columbia Gas shall hold the Detroit extension (which is the pipeline owned by Michigan Gas) as trustee for the benefit of Panhandle Eastern and that Columbia Gas transfer such extension, interests therein and the issues and profits thereof to Pandhandle Eastern. While there is some slight difference between these prayers with respect to the mechanics to be adopted, the same object is sought to be achieved in both cases, namely, the divestiture and transfer to Panhandle Eastern by Michigan Gas of all its interests in the Detroit extension.

Relief clause (3) of the fourth application requests the surrender by Mr. Dunn of 80,000 shares of the common stock of Panhandle Eastern beneficially owned by Columbia Oil in exchange for a new security having no voting power. A similar prayer is contained in paragraph 2(c) of the first application, which requests the surrender of the same shares of stock at cost. While the mechanics are slightly different, the scope and object of the relief requested in these two clauses are the same. Relief clause (4) of the fourth application requests that the Class A and Class B preferred stock of Panhandle Eastern held by Mr. Dunn and beneficially owned by Columbia Oil be sterilized of voting power. A similar prayer is contained in paragraph 2(c) of the first application, which requests the surrender of such stock at cost. The purpose of both clauses is to eliminate the voice of this stock in the conduct of Panhandle Eastern's affairs. While the prayer in the first application contemplates a more drastic method for accomplishing this result, the object sought to be accomplished by these clauses is the same. Relief clause (6) of the fourth application contains the general prayer for further relief. The corresponding prayer in the first application may be found in paragraph 4 thereof.

The only instances in which the prayers in the first application differ from those contained in the fourth application are where they exceed the scope of the prayers in the fourth application. These instances are where the first application prays that the defendants be adjudged guilty of contempt for alleged violations of the decree (Relief Clause 1), that Columbia Oil sell its remaining shares of stock in Panhandle Eastern (Relief Clause 2(d)), that the exceptions set forth in Article II of the Decree be stricken out (Relief Clause 2(e)), and that Mr. Dunn be removed as Trustee (Relief Clause 3).

Furthermore, the same parties are involved in both applications and in the same capacities. Since counsel for Mokan have indicated on a number of occasions that Mokan's fourth application is a derivative application on behalf of Panhandle Eastern for relief to which Panhandle Eastern is entitled under Sections IV and V of the Consent Decree, while its first application was not, we desire to dispose of this contention by referring to Paragraph XXIX of the first application which quotes from Section V of the Consent Decree referring to the relief to which Panhandle Eastern might be entitled under Sections IV and V of the Decree, and by quoting from Paragraph XXXIII of its first application, as follows (R. 308):

> "XXXIII. That this Petition is filed by Mokan as the owner of a substantial interest in the capital stock of Panhandle Eastern as aforesaid, both in its own right and also in behalf of and for the benefit of Panhandle Eastern for reason that Panhandle Eastern has refused to intervene herein and to assert its rights arising out of the said violations of the said Decree."

From the foregoing discussion it is apparent that in substance the subject-matter of both applications is the same, the parties are the same, all the issues raised in the fourth application were raised, together with additional issues, in the first application, and all the relief requested in the fourth application is substantially the same as some of the relief requested in the first application.

In applying the general rule of *res judicata* referred to above (*supra*, p. 38), the results of the comparison of the two applications may be restated as presenting the following questions—whether the order denying the first application is *res judicata* with respect to the fourth application in view of the fact that: (1) the grounds on which

recovery is sought in the fourth application are more limited in scope in that Mokan is asserting in a derivative action only alleged rights of Panhandle Eastern under Sections IV and V of the Consent Decree; (2) while these grounds were set forth in Mokan's first application, they were not expressly considered by the Court in its opinion as one of the grounds on which it arrived at its decision denying the first application; and (3) the relief requested in the fourth application, although substantially the same as some of the relief requested in the first application and having the same object is narrower in scope and does not constitute all the relief requested in the first application.

Under well established principles, the cause of action on which the fourth intervention application is based is the same cause of action as that on which the first application was based. Therefore, this case falls within the first class of cases referred to in the general rule (*supra*, p. 38) and the denial of the first application would be *res judicata* on all matters which were presented, as well as those which might have been presented, on the first application. In discussing the elements involved in a consideration of whether the same or different causes of action are presented, this Court said in *Baltimore Steamship Company* v. *Phillips*, 274 U. S. 316, at page 321:

> "'A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show. The number and variety of the facts alleged do not establish more than one cause of action so long as their result, whether they be considered severally or in combination, is the violation of but one right by a single legal wrong. The mere multiplication of grounds of negligence alleged as causing the same injury does not result in multiplying the causes of action. 'The facts are merely the means, and not the end. They do not constitute the cause of action,

but they show its existence by making the wrong appear. "The *thing,* therefore, which in contemplation of law as its cause, becomes a ground for action, is not the group of *facts* alleged in the declaration, bill, or indictment, *but the result of these in a legal wrong, the existence of which, if true, they conclusively evince.*" ' ".

Thus, the presentation of the more limited theory in the fourth application (whether or not presented in the first application), when such application is based on the same subject matter and requests substantially the same relief as were contained in the first application, does not prevent the operation of the doctrine of *res judicata.* The principle adopted in many cases of this kind is that all grounds in support of the same cause of action must be presented at one time and cannot be split. See *United States* v. *California and Oregon Land Company,* 192 U. S. 355, where this Court said at page 358:

"The parties, the subject matter and the relief sought all were the same. * * * The best that can be said, apart from the act just quoted, to distinguish the two suits, is that now the United States puts forward a new ground for its prayer. Formerly it sought to avoid the patents by way of forfeiture. Now it seeks the same conclusion by a different means, that is to say, by evidence that the lands originally were excepted from the grant. But in this, as in the former suit, it seeks to establish its own title to the fee.

"It may be the law in Scotland that a judgment is not a bar to a second attempt to reach the same result by a different *medium concludendi. Phosphate Sewage Co.* v. *Molleson,* 5 Ct. of Sess. Cas. (4th Ser.) 1125, 1139; although in the same case on appeal Lord Blackburn seemed to doubt the proposition if the facts were known before. S. C., 4 App. Cas. 801, 820. But the whole tendency of our decisions is to require

a plaintiff to try his whole cause of action and his whole case at one time. He cannot even split up his claim, *Fetter* v. *Beale*, 1 Salk. 11; *Trask* v. *Hartford & New Haven Railroad*, 2 Allen, 331; Freeman, Judgments, 4th ed. §§238, 241; and, *a fortiori*, he cannot divide the grounds of recovery."

To the same effect is *Grubb* v. *Public Utilities Commission of Ohio*, 281 U. S. 470, where this Court said at pages 378-479:

"'The thing presented for adjudication in the case in the state court was the validity of the order, and it was incumbent on the appellant to present in support of his asserted right of attack every available ground of which he had knowledge. He was not at liberty to prosecute that right by piecemeal, as by presenting a part only of the available grounds and reserving others for another suit, if failing in that. *Werlein* v. *New Orleans*, 177 U. S. 390, 398, *et seq*; *United States* v. *California and Oregon Land Co.*, 192 U. S. 355, 358.

"'As the ground just described was available but not put forward the appellant must abide by the rule that a judgment upon the merits in one suit is *res judicata* in another where the parties and subject matter are the same, not only as respects matters actually presented to sustain or defeat the right asserted, but also as respects any other available matter which might have been presented to that end. *Baltimore S. S. Co.* v. *Phillips*, 274 U. S. 316, 319; *United States* v. *Moser*, 266 U. S. 236, 241; *Cromwell* v. *County of Sac*, 94 U. S. 351, 352.'"

See also:

Hubbell v. *United States*, 171 U. S. 203, at p. 209;

Werlein v. *New Orleans*, 177 U. S. 390, at p. 400;

Northern Pacific Railway Company v. *Slaght*, 205 U. S. 122, at p. 131;

Southern Minnesota Railway Extension Co. v. *St. Paul & S. C. R. Co.*, 55 Fed. 690, at p. 694 (C. C. A. 8th).

As was said in the case of *Harrison* v. *Remington Paper Co.*, 140 Fed. 385, at p. 400; cert. den. 199 U. S. 607:

> "The test of identity of causes of action is the identity of the facts essential to maintain them."

It has been demonstrated that the facts alleged in both applications are in substance the same—for the most part in the same words.

A case very much in point with the instant case is *Manhattan Trust Co.* v. *Trust Co. of North America*, 107 Fed. 328 (C. C. A. 8th), cert. den. 181 U. S. 622. In that case a petitioner filed his intervention petition in a railroad foreclosure suit asserting a claim for rental of terminal property against the defendant and claiming that such claim was entitled to priority over the debt of the mortgagee by reason of an alleged statutory landlord's lien and also by reason of its being a preferential debt in equity. After the court dismissed this intervention petition, only mentioning in its opinion that the petitioner did not have a landlord's lien, petitioner filed an amended intervention petition asserting its equitable right to preferential payment of such rentals from a fund in the registry of the court accumulated by the receivers from the earnings of the road. The court, in dismissing the second intervention application, held that the dismissal of the first intervention application would be a bar to the second application, despite the fact that the ground on which the second application was based had not been expressly considered by the court in its opinion

denying the first intervention application, saying at page 332:

> "When the plaintiff rests his claim for relief in his bill on two or more grounds, and his bill is dismissed generally on its merits, he is thereafter estopped from maintaining a second bill seeking the same relief upon one of the grounds set up in his first bill and in issue under the pleadings. A judgment or decree rendered upon the merits constitutes an absolute bar to a subsequent action on the same claim or demand, and it is no answer to the plea of estoppel in such a case to say the court did not, in its opinion, consider the particular ground of relief. Its decree dismissing the bill on its merits covers all the grounds for relief set up in the first bill and put in issue by the pleadings as fully and effectually as if they had been specifically named in the court's opinion. Any other rule would make litigation interminable. As long as a party could show that the court, in its opinion, took no notice of one of its alleged grounds for relief, he could file a new bill seeking the same relief sought by his first bill on that ground, and so on as long as any one of the grounds of relief set up in his first bill was not discussed, and in terms decided against him, in the opinion of the court."

But even if the first and fourth intervention applications should be regarded as based upon different causes of action, it is clear from the cases that this case would fall squarely within the second class of cases of the general rule where the ground or matter involved in the subsequent suit cannot be urged since it was in issue and decided in the prior suit. It is settled that when a claimant rests his claim for relief in his complaint or bill on several grounds and the bill is dismissed generally without a specific adverse ruling on one of the grounds, the complainant is thereafter

estopped from maintaining a subsequent bill seeking similar relief on the basis of the ground which was not expressly ruled upon, but which was necessarily decided by the court in dismissing the first bill, whether or not the prior and subsequent actions are upon the same cause of action.

This result was reached in the case of *Venner* v. *Chicago City Ry. Co.*, 195 Fed. 788; aff'd 200 Fed. 1023. This case is of special interest since the complainant's second bill was based upon more limited or confined grounds than the first bill, which had been dismissed, the complainant having eliminated from the second bill the grounds on which the Court had expressly dismissed the first bill for multifariousness and laches. Nevertheless, the Court dismissed the second bill, saying, at page 789 (195 Fed.):

> "Complainant seeks to deduce from the fact that the Supreme Court dismissed the writ of error issued in said cause that the court did not deem the federal questions presented in his bill to be involved in that proceeding. No such deduction may in fact be made. There are other hypotheses upon which such action might have been taken. While counsel for defendants in error in that cause did call the attention of the Supreme Court of the United States to the fact that other than federal questions were presented, he also presented to the court the legal insufficiency of the allegations of the bill, with reference to the federal questions aforesaid."

The Court of Appeals of the District of Columbia arrived at the same decision in the case of *United States* v. *Interstate Commerce Commission*, 8 Fed. (2d) 905, at page 906, cert. den. 270 U. S. 651:

> "That contention is answered by the fact that the actual judgment upon the issues presented in the former case was rendered by the trial court. The

petitioner in the case sought a remedy in that court by mandamus, or alternatively by certiorari; but the court denied it any remedy whatever, and dismissed the petition. This was an adjudication of all the issues raised in the case below, both as to substantive rights and the remedies sought. The judgment was affirmed by this court, without modification, and the force and effect of the adjudication remained as before the appeal.

"It is said by the appellant that the question of certiorari was not given serious consideration, either by the court or counsel, in the former proceedings. This, however, does not alter the situation, for the question was expressly raised in the case, and it was not reserved out of the judgment. It must therefore be considered as adjudicated therein."

To the same effect is the decision of this Court in *Grubb v. Public Utilities Commission of Ohio*, 281 U. S. 470, at pages 477-478:

"In the opinion of the state court there is no express mention of the constitutional grounds on which the appellant asked a reversal of the order excluding the loop over the Ohio River at Portsmouth; and from this it is argued that the constitutional validity of the order was not determined, and therefore as to that matter the judgment is not *res judicata*. But the argument is not sound. The question of the constitutional validity of the order was distinctly presented by the appellant's petition and necessarily was resolved against him by the judgment affirming the order. Omitting to mention that question in the opinion did not eliminate it from the case or make the judgment of affirmance any the less an adjudication of it."

The case at bar presents the same situation as the foregoing cases in that the more limited ground for relief under

Sections IV and V of the Consent Decree presented in support of the fourth intervention application was necessarily presented to and decided by the court below on the first intervention application. On that application intervention was requested on more limited grounds and also on broader grounds. By completely denying intervention, the court necessarily decided that Mokan and Panhandle Eastern (as that was an application by Mokan in its own right and also as a stockholder on behalf of Panhandle Eastern) were not entitled to intervention either on the more limited grounds or on the broader grounds, despite the fact that the court did not expressly pass upon the more limited grounds in its opinion. But even if it were the case that the more limited grounds had not actually been presented to the court and were now presented for the first time in support of the fourth application, nevertheless, the more limited grounds were necessarily within the scope of the issues which were decided by the court when it denied the first application in toto, and, therefore, whether or not both applications are based on the same cause of action, Mokan would be barred from now urging the more limited grounds in support of its fourth application. The courts have universally so applied the rule in cases of this kind, even though the grounds on which the subsequent suit is brought were not brought to the attention of the court on the first suit. This Court so held in the case of *Southern Pacific Railroad Company* v. *United States*, 168 U. S. 1, at pages 48-49:

> "The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit

> is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them."

This Court held to the same effect in the case of *Gunter, Attorney General of the State of South Carolina* v. *Atlantic Coast Line Railroad Company*, 200 U. S. 273, saying at page 290:

> "The complaint in the *Pegues* case, it is said, mistakenly averred that the Cheraw and Darlington Railroad had not been built at the time the amendment of the charter was made which gave the exemption relied upon, and as this, it is asserted, was not traversed by the answer filed in the case by the Attorney General it was consequently erroneously assumed to be true in fact, and the decree, it is argued, was based upon such assumption. From this the contention is that if the truth had been established a different decree would have been rendered, because no consideration for the grant of exemption would then have appeared. But, even granting the premise, the deduction is unsound. To admit it would destroy the effect of the thing adjudged, resulting from the decree in the *Pegues* case, since all defenses then existing to the asserted right of

exemption, whether brought to the attention of the court or waived, were foreclosed by the decree. *United States* v. *California & Oregon Land Co.*, 192 U. S. 355; *Fayerweather* v. *Ritch*, 195 U. S. 276, 300 *et seq.*, and cases cited."

To the same effect is the decision of this Court in *Northern Pacific Railway Company* v. *Slaght*, 205 U. S. 122, at page 133:

> "In other words, plaintiff in error, as successor of the Spokane and Palouse Railway Company, again asserts title to the very property that was the subject of the other suit, the source of title, only, being different. If this may be done, how often may it be repeated? If defeated upon the new title, may plaintiff in error assert still another one, either in its predecessor or in itself, and repeat as often as it may vary its claim? The principle of *res adjudicata* and the cases enforcing and illustrating that principle declare otherwise."

See also *City of Boston* v. *McGovern*, 292 Fed. 705, at p. 711 (C. C. A. 1st); cert. den. 265 U. S. 581.

Where, as here, the parties and the subject matter are the same in both applications, the fact that the relief prayed for in the fourth application is slightly different is immaterial when the object sought to be achieved is the same—the doctrine of *res judicata* is nevertheless a complete bar to the fourth application. This is a well established rule and is stated in *Fagin* v. *Quinn*, 24 Fed. (2d) 42, at pp. 43-44; cert. den. 277 U. S. 606:

> "We are of opinion that the plea of *res judicata* interposed by appellees ought to be sustained. The parties who brought the suit in the state court in 1919 and the parties to this suit are the same, and the subject-matter is the same. * * *

> Where the issues are identical, the fact that the relief prayed for is slightly different is immaterial."

To the same effect is *Werlein* v. *New Orleans,* 177 U. S. 390, 400. The Circuit Court of Appeals for the Eighth Circuit reached the same conclusion in *Sapulpa Petroleum Co.* v. *McCray,* 4 Fed. (2d) 645, saying at p. 650:

> "So it is that the real parties in interest in the former suit and in this suit are the same or the representatives of the same interests. McCray is the plaintiff in the former suit; McCray is the plaintiff in this suit. The two Burnetts and the receiver of the Sapulpa Company were the defendants in the former suit; the two Burnetts and the Sapulpa Company and its receiver are the defendants in this suit. The subject-matter of the two suits was the same—the two leases, the possession and proceeds thereof. The object sought by the plaintiff in the two suits was the same—the title and possession of that *res.*"

It is clear that while the grounds on which relief is sought in Mokan's fourth intervention application are more limited but within the scope of the grounds urged in support of its first intervention application, and although the relief requested in the fourth intervention application is not exactly the same, the object sought to be accomplished in the fourth application is the same as was sought to be accomplished in the first application and the parties and subject-matter are the same on both applications. Therefore, under the foregoing authorities, since the applications are based on the same cause of action and since the more limited ground for relief under Sections IV and V of the Consent Decree could have been litigated on the first application, this ground cannot again be urged in support of the claim presented by the fourth application; and even if the

claim presented by the fourth application was based on a different cause of action, the limited ground was presented to the court and necessarily decided on the first application and cannot now be urged.

That the foregoing principles of *res judicata* are equally applicable to final orders denying intervention applications, (and as previously explained we are assuming for the purpose of this point that the order denying the first application was a final order), as well as to final orders and decrees in other suits and proceedings, has been affirmatively decided. The Circuit Court of Appeals for the Seventh Circuit reached this conclusion in the case of *United States Trust Co. of New York* v. *Chicago Terminal Transfer R. Co.*, 188 Fed. 292, saying at pages 299-300:

> "If the order of January 5, 1910, denying leave to intervene, is appealable, it is so because it is a final order or decree against appellants. If so, the order of April 17, 1909, denying leave to intervene, was equally a final order or decree. If, prior to April 17, 1909, the stockholders had an absolute right to intervene on the cause of action stated, they had as perfect a right to file their petition and be heard as they would have to file their original bill or declaration on any cause of action and be heard. Suppose a suitor should file an original bill, and the court should decline to hear him and should enter a final decree dismissing the bill for lack of merit on its face. Could such a suitor require the court to hear the same cause of action on a second bill which disclosed the former proceedings and adjudication? We are of opinion that the answer applies to the present case. No inadvertence or mistake, as ground for amendment of the second petition, was advanced. If there had been ground for amendment, the amendment should have been made before the final order was entered. If the ground was not known until

> afterwards, an application to vacate the final order or a petition for review should have been made in the Circuit Court. Without getting rid of that final order by proceedings either in the Circuit Court or on appeal, the stockholders could not thereafter compel a hearing of the same complaint. If that is not so, then appellants might also have ignored the final order of January 5, 1910, and have renewed their application as many times as they pleased."

See also *Manhattan Trust Co.* v. *Trust Co. of North America,* 107 Fed. 328 (C. C. A. 8th), cert, den. 181 U. S. 622 (previously discussed, *supra,* pp. 47-48), and *McDonald* v. *Seligman,* 81 Fed. 753, at page 759 (C. C., No. Dist. of Calif.).

POINT IV.

The District Court was correct in denying Mokan's fourth intervention application because Mokan cannot intervene for the purpose of injecting into the Government's Anti-Trust suit issues of a private nature outside of the scope of the issues involved in that suit.

The only issues involved in the Government's anti-trust suit are: (a) whether the Government's interpretation of the purposes of the Consent Decree is correct and (b) if so, whether the Consent Decree should be supplemented by a further order requiring either Columbia Gas to dispose of its stockholdings in Columbia Oil or Columbia Oil to dispose of its stockholdings in Panhandle Eastern (R. 274-283). Many new issues are raised in Mokan's fourth intervention application (R. 526-540), among which are: (a) whether a trustee should be appointed to hold for the benefit of Panhandle Eastern, and Columbia Gas should

be ordered to turn over to such trustee, all the stock which it holds in Michigan Gas and all its interests in such company, (b) whether Mr. Dunn, the Trustee under the Decree, should be directed to surrender to Panhandle Eastern 80,000 shares of its capital stock beneficially owned by Columbia Oil in lieu of the issue to Columbia Gas and Columbia Oil by Panhandle Eastern of new securities having no voting rights, and (c) whether Mr. Dunn should be directed to vote the common stock and preferred stock of Panhandle Eastern held by him and beneficially owned by Columbia Oil in such a manner that the provisions of such stock may be amended to eliminate the voting powers thereof.

An examination of Mokan's fourth intervention application discloses that it is in the nature of a suit by a minority stockholder against a majority stockholder for the purpose of recovering moneys and properties to which Mokan claims Panhandle Eastern is entitled and of which Mokan claims Panhandle Eastern has been allegedly deprived by reason of certain agreements which Mokan claims were wrongfully entered into because of Columbia Oil's and Columbia Gas' alleged control of the management and affairs of Panhandle Eastern. This is merely a suit of a private nature and has no relation to the Government's anti-trust suit.

A similar attempt was made by the Torquay Corporation to intervene in the anti-trust suit of *United States* v. *Radio Corporation of America*, 3 Fed. Supp. 23, for the purpose of prosecuting private claims after the entry of a consent decree therein. Torquay Corporation challenged the fairness of certain transactions that had taken place between Radio Corporation, General Electric and Westinghouse, and the Court denied the intervention, saying (p. 25):

> "These inquiries have no relation to the relief sought in the government suit. As stated in Equity Rule 37 (28 U. S. C. A. §723), intervention shall be 'in subordination to, and in recognition of, the propriety of the main proceeding.' To allow the intervention here sought and embark upon a determination of the questions raised by petitioner would be to import into this case new issues. This cannot be done. United States *v.* Northern Securities Co. (C. C.), 128 F. 808. The United States and the public can have no interest in any controversy of Radio Corporation, its stockholders and creditors, against the General Electric and Westinghouse companies. The consent decree terminated what promised to be protracted and burdensome litigation. It was entered in the public interest and met the policy of the statutes."

Similarly, the Circuit Court for the Southern District of Minnesota, in the case of *United States* v. *Northern Securities Co., et al.*, 128 Fed. 808, held that a controversy between stockholders and the Securities Company regarding the manner in which the holdings of that company in two railway companies ought to be distributed was outside the scope of the issues in the main suit, saying, at page 813:

> "Our conclusion is that the petitioners should not be allowed to intervene and import into the case new issues to be tried. The due enforcement of the decree does not necessitate such action, * * *."

The District Court of the District of Delaware reached the same conclusion in denying Mokan's first intervention application (*United States* v. *Columbia Gas & Electric Corporation*, 27 Fed. Supp. 116, at page 120, app. dis. 108 Fed. (2d) 614, cert. den. 309 U. S. 687), where the same

matters were presented as are now presented on Mokan's fourth intervention application:

> "The prayers of the proposed petition of intervention diverge sharply from the subject matter of the supplemental complaint. Affording petitioner relief would fundamentally alter and seriously complicate the character of this proceeding. The bare statement of the prayers sufficiently indicates how far they depart from the scope of the Government's complaint and how serious a delay would be involved in the determination of the questions raised thereby. The situation thus falls squarely within the last sentence of subdivision (b)" (referring to Rule 24(b) of the Federal Rules of Civil Procedure) "which codifies prior equity practice.
>
> 'The intervener was not entitled to come into the suit for the purpose of having adjudicated a controversy solely between it and plaintiff. Issues tendered by or arising out of plaintiff's bill may not by the intervener be so enlarged. It is limited to the field of litigation open to the original parties. * * * Introduction by intervention of issues outside those that properly may arise between the original parties complicates the suit and is liable to impose upon plaintiff a burden having no relation to the field of the litigation opened by his bill.' Chandler & Price Co. *v.* Brandjten & Kluge, 296 U. S. 53, 57, 59, 56, S. Ct. 6, 8, 80 L. Ed. 39.
>
> 'It is apparent that, the right to become a party to the litigation being given, the range of activity of the newcomer in the prosecution or defense of the interest he is thus permitted to assert must necessarily be as extensive as, but no greater than, that allowed the original parties to the suit.' Leaver *v.* K. & L. Box & Lumber Co., D. C., 6 F. 2d 666, 667."

POINT V.

The District Court was correct in denying Mokan's fourth intervention application because intervention will not be permitted, after the entry of a decree in the main suit, for the purpose of attacking said decree or modifying the provisions thereof.

The Consent Decree entered January 29, 1936, in the Government's anti-trust suit permits Columbia Oil to retain its stockholdings and acquire additional stockholdings in Panhandle Eastern and to "exercise voting rights appurtenant thereto" subject to the trust of which Mr. Dunn was appointed trustee (R. 145), and also contemplates that Columbia Gas or any other person willing to advance funds to finance the same may, under certain restrictions therein imposed, build and acquire the ownership of the pipe line which was to be constructed to Detroit from the easterly terminus of Panhandle Eastern's pipe line at the Illinois-Indiana state line (R. 148). Columbia Gas furnished the necessary financing under a contract with Panhandle Eastern dated January 31, 1936, all with the approval of Mr. Dunn, the Government's representative (R. 152, 350-355), and the new pipe line was constructed and acquired by Michigan Gas, a wholly owned subsidiary of Columbia Gas (R. 163).

By its fourth intervention application Mokan seeks (a) to divest Columbia Oil of its beneficial ownership in 80,000 shares of the capital stock of Panhandle Eastern, (b) to sterilize the voting power of the Class A and Class B preferred stock in Panhandle Eastern also beneficially owned by Columbia Oil, and (c) to divest Columbia Gas of all its stock in Michigan Gas and other interests in such company.

This relief is a clear attempt to modify and vary the terms of the above-mentioned provisions of the Consent Decree and constitutes a direct attack upon and impeachment of that decree.

The authorities universally hold that intervention will not be allowed for such purpose. This Court said in *United States* v. *California Cooperative Canneries*, 279 U. S. 553 at page 556:

> "Nor did it" (Court of Appeals of the District of Columbia) "refer to the settled rule of practice that intervention will not be allowed for the purpose of impeaching a decree already made."

In a footnote on the same page (p. 566), this Court set forth numerous authorities supporting the principle of law enunciated in the above quoted citation, to which this Court is respectfully referred.

POINT VI.

The District Court was correct in denying Mokan's fourth intervention application because Mokan is guilty of *laches* and is, therefore, barred from intervening in the Government's Anti-Trust suit.

The principal matters complained of by Mokan in its fourth intervention application (R. 526-540) are: (a) the contract entered into between Panhandle Eastern, Columbia Gas and Columbia Oil dated January 31, 1936 (R. 350-355) for the financing of the new pipe line to Detroit and the construction, acquisition and operation of said line by Michigan Gas (Paragraphs IX, X, XI, XII, XIII and XIV of said application), (b) the acquisition by Columbia Oil of 80,000 shares of the common stock of Panhandle Eastern in connection with such financing and the controlling stock

interest in Panhandle Eastern thus acquired by Columbia Oil (Paragraph XV of said application), (c) the acquisition by Columbia Oil of 100,000 shares of Class A and 10,000 shares of Class B preferred stock of Panhandle Eastern (Paragraph XVIII of said application), and (d) the provisions of the agreement dated March 17, 1936, between Panhandle Eastern and Michigan Gas (Paragraphs XX and XXI of said application).

But all of the foregoing matters were consummated in the first few months of 1936 (R. 152-154, 162-186, 219-236, 243, 350-355); many of them were contemplated by the Consent Decree and the stipulation of the parties on which the decree was entered (R. 138-149), and all of them were agreed to or ratified by the Receivers of Mokan on Mokan's behalf and by Panhandle Eastern and were released by general releases signed by the Receivers of Mokan on Mokan's behalf and by Panhandle Eastern (R. 152-154, 219-236, 249-274). Considerable sums of money have been expended by Columbia Oil in reliance upon these agreements. Mokan's first intervention application was made on February 6, 1939 (R. 284), and its fourth intervention application was made on April 16, 1940 (R. 526), nearly three and four years, respectively, after the matters complained of had been consummated.

Rule 24 of the Federal Rules of Civil Procedure provides that both intervention as of right and permissive intervention must be "Upon timely application * * *". This is in recognition of a uniform line of decisions rendered by the courts in interventions as of right as well as in permissive interventions that a person must move promptly or be barred by laches.

In the case of *United States Trust Co. of New York* v. *Chicago Terminal Transfer R. Co.*, 188 Fed. 292, where the petitioner for intervention delayed for two years after hav-

ing knowledge of the acts complained of, the court, in denying the application for leave to intervene, said at page 299:

> "These various moves do not impress us as being the acts of a suitor in equity who is conscious that he has a substantial interest and a substantial ground for asserting that interest, and who is anxious to prosecute his substantial rights with all reasonable diligence and without unnecessarily obstructing the course of litigation of other issues to which he is not a party."

Also see *Smith* v. *Gale*, 144 U. S. 509, 520-521. The District Court, on a similar state of facts presented by Mokan's first intervention application, said in denying that application that "Obviously Mokan's application is not a timely one" (*United States* v. *Columbia Gas & Electric Corporation*, 27 Fed. Supp. 116 at p. 119, app. dis. 108 Fed. (2d) 614, cert. den. 309 U. S. 687).

Conclusion.

Mokan or its attorneys have made four intervention applications for leave to intervene in the Government's anti-trust suit pending in the District Court. All of these applications have been based on substantially the same subject-matter. All of these applications have been denied by the District Court, the third one having been dismissed because of lack of authority in the attorneys to make and prosecute such application. The orders denying the first two intervention applications were appealed to the United States Circuit Court of Appeals for the Third Circuit which dismissed the appeals and thereupon a petition for a writ of certiorari to this Court was denied. Appeals from the orders dismissing the third intervention application and denying the fourth intervention application are

now pending before this Court. Two appeals from these same two last mentioned orders have also been taken by the appellant to United States Circuit Court of Appeals for the Third Circuit and are now pending in that court. Stipulations regarding the filing of the records on appeal and formally docketing the appeals in the Circuit Court have been entered into by the parties and are printed at the end of this brief as Appendices D and E.

It is our understanding that if this Court dismisses appeals Nos. 268 and 296, or affirms the orders appealed from on such appeals, the appellant intends to file the records on appeal and formally docket the appeals from these same two orders of the court below in the United States Circuit Court of Appeals for the Third Circuit, to proceed with the prosecution of such appeals, and if lost, to petition this Court for writs of certiorari to review the same matters which are now before this Court on these appeals, Nos. 268 and 269. Thus it appears that there will be no end to this litigation, irrespective of how many times the same matters have been decided at the instance of the same party. This apparent intention of the appellant to prosecute its appeals in the Circuit Court in the event of adverse decisions of this Court on Appeals Nos. 268 and 269 is the more surprising in view of the decision of this Court in the case of *United States* v. *California Cooperative Canneries*, 279 U. S. 553, at page 558, and of the United States Circuit Court of Appeals for the Third Circuit in the case of *Missouri-Kansas Pipe Line Company* v. *United States*, 108 Fed. (2d) 614, at page 615, that the Circuit Court has no jurisdiction to hear such appeals. Under these circumstances, appellee, Columbia Oil & Gasoline Corporation respectfully requests this Court, in the event it upholds said appellee's contentions herein and in appeal No. 269, to render such decisions as will finally bring to an end this multiplicity of proceedings and appeals.

Based on the arguments and authorities herein set forth, the appellee Columbia Oil & Gasoline Corporation respectfully requests this Court to dismiss Mokan's appeal from the order of the District Court denying its fourth intervention application for lack of jurisdiction, or, if this Court considers that it has jurisdiction, to affirm the order of the District Court.

Respectfully submitted,

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Of Counsel:

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Appendix A.

Reported in 27 Federal Supplement, 116.

UNITED STATES v. COLUMBIA GAS & ELECTRIC CORPORATION, *et al.*

No. 1099

DISTRICT COURT, D. DELAWARE.

March 29, 1939.

In Equity. Suit under the Anti-Trust Act by the United States of America against Columbia Gas & Electric Corporation and others wherein a consent decree was entered and the United States filed a supplemental complaint for a judgment to effectuate the consent decree. On petition of the Missouri-Kansas Pipe Line Company for an order granting it leave to intervene and to file a petition.

Motion denied.

John J. Morris, Jr., U. S. Atty., of Wilmington, Del., and Milton Katz, Sp. Asst. to Atty. Gen. (C. Thurman Arnold, Asst. Atty. Gen., and Wendell Berge and Hugh B. Cox, Sp. Assts., to Atty. Gen., on the brief), for United States.

Clarence A. Southerland (of Ward & Gray), of Wilmington, Del., and Douglas M. Moffat (of Crayath, de Gersdorff, Swaine & Wood), of New York City, for defendant Columbia Gas & Electric Corporation.

Daniel O. Hastings, of Wilmington, Del., and William H. Button and Auchincloss, Alley & Duncan, all of New York City, for defendant Columbia Oil & Gasoline Corporation.

Steward Lynch, of Wilmington, Del., and Kenneth E. Walser and Richard B. Hand, both of New York City, for Missouri-Kansas Pipe Line Co., petitioner for leave to intervene.

NIELDS, District Judge.

Missouri-Kansas Pipe Line Company, a Delaware corporation, moves the Court for an order granting it leave

to intervene in this proceeding and to file the petition annexed to its motion and requiring defendants respectively to answer or otherwise plead thereto.[1]

Petitioner alleges it owns 324,326 shares of the 728,652 shares of the outstanding common stock of Panhandle Eastern Pipe Line Company.

This suit in equity was brought by the Attorney General of the United States under the Anti-Trust Acts, 15 U. S. C. A. §1, *et seq.* The defendants duly answered and denied the material allegations of the bill. Upon a stipulation between the parties to this cause a consent decree (hereinafter referred to as "consent decree") was entered on January 29, 1936. Section V of that decree provided: "That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

December 21, 1938 United States of America filed its supplemental complaint praying, *inter alia*, that this court exercise the jurisdiction retained by it in section V above recited and in order to give full effect to said decree that this court enter judgment:

"3. Directing Columbia Gas to divest itself of all control, direct or indirect, legal or practical, of Panhandle Eastern, * * *.

"(a) Directing Columbia Oil to proceed straightway to formulate and submit to this court for approval, * * * a

[1] In the interest of brevity, Columbia Gas & Electric Corporation will be referred to in this opinion as "Columbia Gas", Columbia Oil & Gasoline Corporation as "Columbia Oil", Panhandle Eastern Pipe Line Company as "Panhandle Eastern" and Missouri-Kansas Pipe Line Company as "Mokan".

plan for the sale or other disposition by it of all interest which it may have in any stock of Panhandle Eastern;

"(b) Directing Columbia Gas to proceed straightway to formulate and submit to this court for approval, as an alternative to any plan submitted by Columbia Oil pursuant to paragraph (a), * * * a plan for the sale or other disposition by it of all interest which it may have in any securities having present or potential voting rights in Columbia Oil.

"4. Reconstituting the voting trust established pursuant to said decree of January 29, 1936, so as:

"(a) To make the voting trustee a trustee for sale, * * *" for a limited term and with powers and duties appropriately defined.

The time for answer was extended by stipulation and the answer has not been filed to the Government's supplemental complaint.

February 6, 1939 Mokan filed its motion for leave to intervene in this suit and to file the petition annexed to its motion. The prayers of this petition are:

"1. That the defendants be adjudged guilty of contempt for failure to comply with and for having violated the terms, conditions and provisions of the Decree of this Court entered herein on January 29, 1936.

"2. That said Decree be interpreted, enlarged and enforced as follows:

"(a) That it be decreed that Columbia Gas holds as trustee for Panhandle Eastern its pipe line from Dana to Zionsville, Indiana, and from Zionsville to Detroit, Michigan, and that Columbia Gas be ordered and directed forthwith to transfer said line to Panhandle Eastern upon such terms and conditions for the security of its investment therein as this Court may deem just and to account to Panhandle Eastern for the issues and profits thereof.

"(b) That Columbia Gas be ordered and directed forthwith to cause Michigan Gas Transmission Corporation to transfer to Panhandle Eastern any and all contracts or agreements for the supply of gas entered into with any municipalities, persons, firms or corporations in the States of Indiana, Michigan and Ohio, since the entry of the said Decree.

"(c) That Columbia Oil be ordered forthwith to surrender to Panhandle Eastern at cost for cancellation its Class B preferred stock of Panhandle Eastern and 80,000 shares of the common stock of Panhandle Eastern.

"(d) That Columbia Oil be ordered forthwith to sell its remaining stock of Panhandle Eastern to a purchaser or purchasers and upon terms to be approved by this Court.

"(e) That the exceptions set forth in Article II of the decree be stricken out.

"3. That Gano Dunn be removed as Trustee, and that a new Trustee be appointed pending divestiture by Columbia Oil of its Panhandle Eastern securities.

"4. That such other or further relief may be granted as to the Court may seem just and equitable."

In prayer 1 Mokan seeks to raise a question of contempt by defendants in respect to alleged violations of the consent decree of January 29, 1936. By subdivisions (a) and (b) of prayer 2 Mokan seeks to raise a complicated question of property in a transmission line owned by Michigan Gas Transmission Corporation, a subsidiary of Columbia Gas, and extending from the terminus of Panhandle Eastern at Dana, Indiana, to Detroit, Michigan. By subdivision (c) of prayer 2 Mokan seeks to procure the retirement of 80,000 shares of common stock of Panhandle Eastern now held by Columbia Oil. By prayer 3 Mokan seeks to have the past conduct of the trustee appointed under the consent decree of January 29, 1936 inquired into in order that he may be removed for alleged violations of his trust. The statement of these prayers indicates how far they depart from the

scope of the supplemental complaint and how serious a delay would be involved in the determination of the questions raised thereby.

Intervention of Right.

Intervention of right is governed by subdivision (a) of Rule 24 of the Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723c:

"(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof."

Courts are unanimous in requiring prompt action on the part of an intervenor who seeks to assert rights in a suit to which he is not a party. The new rule above quoted requires that application for intervention be timely. It begins with the words "Upon timely application * * *." The matters of which petitioner complains,—the acquisition by Columbia Gas of ownership of the Detroit extension, the acquisition by Columbia Oil of class B preferred stock of Panhandle Eastern, the acquisition by Columbia Oil of common stock of Panhandle Eastern in connection with the Detroit financing, and the March 17, 1936 contract,—all took place before June 1, 1936. Columbia Gas and Columbia Oil have spent many millions of dollars carrying out the transactions. Petitioner had full notice and knowledge of all these arrangements prior to their consummation. These details were set out in the offer of settlement made by Columbia Oil and Columbia Gas to Mokan and were accepted by Mokan after full hearing thereon in the Court of Chancery of the State of Delaware. Obviously Mokan's application is not a timely one.

Clause (1) of subdivision (a) of Rule 24 is plainly inapplicable.

Clause (2) of subdivision (a) relates to cases in which the applicant for intervention has an interest in the action represented by a party so that the applicant may be bound by a judgment in the action. The question of adequacy of representation does not arise unless the applicant is represented in the action. Neither Mokan, as a substantial stockholder of Panhandle Eastern, nor Panhandle Eastern, is represented by the United States. The interest of either of them will not be bound by a judgment on the supplemental complaint. The judgment of this court upon the issues tendered in the supplemental complaint will not bind Mokan or Panhandle Eastern. Such a judgment can not bind them with respect to the wholly different issues tended by Mokan's proposed petition of intervention. Petitioner has no right to encumber the main action which is being conducted by the Attorney General with extraneous issues of a private nature. *United States* v. *Radio Corporation*, D. C., 3 F. Supp. 23, 25. *United States* v. *Northern Securities Co.*, C. C., 128 F. 808, 813.

Clause 3 of subdivision (a) relates to cases in which the applicant will be adversely affected by a disposition of property in the custody of the court in which the applicant asserts an interest. This property consists of stock in Panhandle Eastern beneficially owned by Columbia Oil, and transferred to the voting trustee. In that stock neither Mokan nor Panhandle has any property right. Any disposition of that stock which would terminate control of Columbia Oil over Panhandle Eastern could not be regarded as adverse to either Panhandle Eastern or Mokan. On the contrary, Mokan seeks such disposition. Early in the English law a third person claiming an interest in property under the control of the court was permitted by interrogatories to establish his claim to or lien upon such property. This principle found expression in old Equity Rule 37, 28 U. S. C. A. following section 723. The new rule does not specifically set forth the nature of the interest in the property which a person must have in order to establish his

claim to intervention as a matter of right. It is improbable that the Supreme Court in promulgating this new rule intended to destroy well established principles as the basis of intervention as of right. It would produce chaos to require the courts to recognize the absolute right to intervention of strangers who had no legal or equitable interest in the subject matter of the action.

Clause 3 contemplates that the person having the right of intervention should have a legal interest in the property in the custody of the court. The *res* in this case is the Panhandle Eastern stock in the possession of Dunn. That stock is not being administered by the court. Dunn is not an administrative officer of the court. His duties as trustee merely contemplate the holding of Panhandle Eastern stock owned by Columbia Oil for the purpose of seeing that the provisions of the consent decree are carried out and that the affairs of Panhandle Eastern are free from the control and domination of Columbia Gas. Dunn is obliged to turn over to Columbia Oil all dividends except certain stock dividends. He must vote the stock in the manner directed by Columbia Oil. He is a mere watchman to see that the provisions of the consent decree are carried out. The stock of Panhandle Eastern is not "in the custody of the court or of an officer thereof" within the meaning of Rule 24(a).

Petitioner's final contention is that Rule 24(a) has broadened the well established principle to the extent of no longer requiring "any actual property interest in the *res*". This position is without authority to sustain it.

Permissive Intervention.

Permissive intervention is governed by subdivision (b) of Rule 24 of Rules of Civil Procedure, 28 U. S. C. A. following section 723c:

"(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or

defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties".

Clause (1) has no application. Clause (2). The prayers of the proposed petition of intervention diverge sharply from the subject matter of the supplemental complaint. Affording petitioner relief would fundamentally alter and seriously complicate the character of this proceeding. The bare statement of the prayers sufficiently indicates how far they depart from the scope of the Government's complaint and how serious a delay would be involved in the determination of the questions raised thereby. The situation thus falls squarely within the last sentence of subdivision (b) which codifies prior equity practice.

"The intervener was not entitled to come into the suit for the purpose of having adjudicated a controversy solely between it and plaintiff. Issues tendered by or arising out of plaintiff's bill may not by the intervener be so enlarged. It is limited to the field of litigation open to the original parties. * * * Introduction by intervention of issues outside those that properly may arise between the original parties complicates the suit and is liable to impose upon plaintiff a burden having no relation to the field of the litigation opened by his bill." *Chandler & Price Co.* v. *Brandtjen & Kluge*, 296 U. S. 53, 57, 59, 56 S. Ct. 6, 8, 80 L. Ed. 39.

"It is apparent that, the right to become a party to the litigation being given, the range of activity of the newcomer in the prosecution or defense of the interest he is thus permitted to assert must necessarily be as extensive as, but no greater than, that allowed the original parties to the suit." *Leaver* v. *K. & L. Box & Lumber Co.*, D. C. 6 F. 2d 666, 667.

ANTI-TRUST SUIT.

An individual may not participate in a suit brought under the Anti-Trust laws by the Attorney General of the United States where the Attorney General does not consent to such intervention. In the present case the Attorney

General affirmatively objects to the intervention. In its brief the government states that the United States opposes the motion of Mokan for leave to intervene "because (1) Mokan is not entitled to intervention of right, and (2) intervention by Mokan for the purposes set forth in its proposed petition would unduly complicate and delay the adjudication of the issues tendered by plaintiff's supplemental complaint." When the Anti-Trust laws are violated frequently there are private persons or corporations who feel themselves aggrieved.

Outside this suit Mokan can assert any claim for damages it may have against the defendants or for relief against Dunn for his alleged breaches of trust. Such a right has been recognized by this court.

"However, the petitioner and other stockholders of Radio Corporation should not be deprived of their 'day in court.' The petitioner or any stockholder of Radio Corporation believing himself aggrieved by the action of General Electric or Westinghouse under or pursuant to the provisions of the consent decree may file a bill in this court seeking appropriate relief." *United States* v. *Radio Corporation*, D. C., 3 F. Supp. 23, 26.

Mokan's motion for leave to intervene must be denied.

Appendix B.

Reported in 108 Federal Reporter (2nd) 614.

MISSOURI-KANSAS PIPE LINE CO. *v.* UNITED STATES *et al.*

Nos. 7177, 7183.

CIRCUIT COURT OF APPEALS, THIRD CIRCUIT.

December 15, 1939.

Appeal from the District Court of the United States for the District of Delaware; John P. Nields, Judge.

Suit by the United States of America against the Columbia Gas & Electric Corporation and others to restrain an alleged monopoly. From orders denying petitions of the Missouri-Kansas Pipe Line Company for leave to intervene, 27 F. Supp. 116, 28 F. Supp. 168, the petitioner appeals.

Appeals dismissed.

Martin G. Hannigan, of Wilmington, Del. (Kenneth E. Walser, of New York City, of counsel), for appellant.

Cravath, de Gersdorff, Swaine & Wood, of New York City, Ward & Gray, of Wilmington, Del. (Clarence A. Southerland, of Wilmington, Del., and Douglas M. Moffat, of New York City, of counsel), for defendants-appellees Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory and Edward Reynolds, Jr.

Daniel O. Hastings, of Wilmington, Del., and William H. Button and Auchincloss, Alley & Duncan, all of New York City (William H. Button and James B. Alley, both of New York City, of counsel), for defendant-appellee Columbia Oil & Gasoline Corporation.

Thomas J. Lynch, of Washington, D. C., Wm. L. McGovern, Sp. Assts. to Atty. Gen., and Thurman Arnold, Asst. Atty. Gen., for appellee United States.

Before MARIS, CLARK, and BIDDLE, Circuit Judges.

BIDDLE, Circuit Judge.

These are consolidated appeals from orders of the United States District Court for the District of Delaware, entered March 30, 1939 and July 10, 1939, respectively, 27 F. Supp. 116, 28 F. Supp. 168, denying petitions of Missouri-Kansas Pipe Line Company, the appellant, for leave to intervene. The suit was brought by the United States under the anti-trust laws[1] against Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, and certain individuals, to restrain an alleged monopoly by divesting the Columbia Companies of their control over Panhandle Eastern Pipe Line Company, which had been organized as a wholly owned subsidiary of the appellant. A consent decree was entered on January 29, 1936, under which voting stock of Panhandle, owned by Columbia Oil, was transferred to a trustee. On January 12, 1939, the Government filed a supplemental complaint to effect a complete divestiture of the stock. On February 6, 1939 appellant filed a motion for leave to intervene, alleging that its principal asset was a block of Panhandle stock, and seeking intervention as a matter of right, under Rule 24 of the Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723c, on the ground that it would be adversely affected by any disposition of the Panhandle stock which had been trusteed and which it claimed was "property in the custody of the court or of an officer thereof."[2] On March 30, 1939, the court entered an order denying intervention. On May 15, 1939, the Government moved for a vacation of the consent decree, and filed an amended complaint; and on June 20, 1939, the defendants moved for a modification of the consent decree and submitted a proposed plan to accomplish the divestiture. On July 5th, appellant again sought intervention which was refused on July 10th.

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[1] Act of July 2, 1890, c. 647; Act of Oct. 15, 1914, c. 323, 15 U. S. C. A., §1 *et seq.*

[2] "(a) *Intervention of Right.* Upon timely application anyone shall be permitted to intervene in an action: * * * (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof."

(1) It is unnecessary to consider whether the appellant had an absolute right of intervention under the Rule, or whether the order denying leave to intervene was interlocutory or final, since we are of the opinion that this court is without jurisdiction to consider the appeal.

The question is specifically ruled by *United States* v. *California Cooperative Canneries,* 279 U. S. 553, 558, 559, 49 S. Ct. 423, 425, 73 L. Ed. 838. In that case a consent decree had been entered against certain meat packers. Two years later the co-operative filed a petition to intervene. The Supreme Court of the District of Columbia denied intervention. The Court of Appeals reversed and directed that appellant be allowed to intervene. *California Co-op. Canneries* v. *United States,* 55 App. D. C. 36, 299 F. 908. The Supreme Court reversed the judgment of the Court of Appeals and held that appeals under the Expediting Act[3] must be taken directly from the District Court to the Supreme Court. "Thus, Congress limited the right of review to an appeal from the decree which disposed of all matters, see *Collins* v. *Miller,* 252 U. S. 364, 40 S. Ct. 347, 64 L. Ed. 616; and it precluded the possibility of an appeal to either court from an interlocutory decree. * * * The purpose of Congress to expedite such suits would obviously be defeated if in the District of Columbia an appeal lay to the Court of Appeals from a denial of a motion for leave to intervene."

That the Expediting Act is only to facilitate enforcement of the final decree and that here there is no final decree, is urged by appellant, but not sustained by the Supreme Court's construction of the Act. And, whether or not these two orders are interlocutory or final, it is per-

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[3] Act of Feb. 11, 1903, §2, 15 U. S. C. A., §29. "*Appeals to Supreme Court.* In every suit in equity brought in any district court of the United States under any of the laws mentioned in the preceding section, wherein the United States is complainant, and appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof."

fectly clear from that decision that we have no jurisdiction to hear the appeals.

The appeals are therefore dismissed.

(2, 3) The transcript of record in this case consists of 1486 pages, of which 361 only were printed under appellant's praecipe, and the balance under the praecipe of the two corporate appellees. We think that the narrow questions presented to us do not warrant the printing of such an elaborate record, in no sense justified by the appeal. Appellant should not be called upon to pay these unnecessary costs; and we accordingly direct that three-fourths of the costs of printing the record be taxed against Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation jointly; and the balance of the costs on appeal against appellants.[4]

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[4] Although rule 29 of our Court, dealing with the costs, does not apply to cases where the appeal is dismissed for want of jurisdiction, this Court has undoubtedly power in equity cases to allow costs in its discretion. *H. H. Robertson Co.* v. *Klauer Mfg. Co.*, 8 Cir., 98 F. 2d 150. Courts have exercised this discretion in not permitting costs of printing part of the record not necessary to the determination of the relevant issues. *Syracuse Engineering Co.* v. *Haight*, 2 Cir., 97 F. 2d 573, 574; *Kynerd* v. *Hulen*, 5 Cir., 5 F. 2d 160; *Amerlux Steel Corp* v. *Johnson Line*, 9 Cir., 33 F. 2d 70; *Davis* v. *Carrier*, Cust. & Pat. App., 81 F. 2d 250; *Lincoln Motor Co.* v. *Lincoln Mfg. Co.*, 58 App. D. C. 191, 26 F. 2d 563.

Appendix C.

Reported in 32 Federal Supplement, 474.

UNITED STATES *v.* COLUMBIA GAS ELECTRIC CORPORATION, *et al.*,

No. 1099.

DISTRICT COURT, D. DELAWARE.

April 6, 1940.

In Equity. Anti-trust suit by the United States of America against the Columbia Gas & Electric Corporation and others, wherein a consent decree was entered. On motion to dismiss application by the Panhandle Eastern Pipe Line Company to become a party for a limited purpose.

Motion granted.

Robert J. Bulkley, of Cleveland, Ohio, Russell Hardy, of Washington, D. C., and Arthur G. Logan (of Logan & Duffy), of Wilmington, Del., for petitioner.

William H. Button and James B. Alley (of Auchincloss, Alley & Duncan), both of New York City, and Daniel O. Hastings (of Hastings, Stockly & Layton), of Wilmington, Del., for Columbia Oil & Gasoline Corporation.

Douglas M. Moffat (of Cravath, de Gersdorff, Swaine & Wood), of New York City, and Clarence A. Southerland (of Southerland, Berl, Potter & Leahy), of Wilmington, Del., for Columbia Gas & Electric Corporation.

Thomas J. Lynch, Sp. Asst. to Atty. Gen. and Stewart Lynch, U. S. Atty., of Wilmington, Del., for the United States.

Edward N. Goodwin, of New York City, and Hugh M. Morris and Edwin D. Steel, Jr., both of Wilmington, Del., for Panhandle Eastern Pipe Line Co.

NIELDS, District Judge.

Motion to dismiss application to become a party for a limited purpose.

In the anti-trust suit of United States *v.* Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, and others, a consent decree was entered by this Court January 29, 1936. The closing paragraph of the decree provides: "* * * that Panhandle Eastern (Panhandle Eastern Pipe Line Company) upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof".

The sole question raised by the motion to dismiss is whether Panhandle Eastern has made a "proper application" to become a party to this suit. March 23, 1940, a document in the form of an unverified application to become a party was filed. This document is signed "Panhandle Eastern Pipe Line Company by Arthur G. Logan." Immediately below this signature appear "Arthur G. Logan, Logan & Duffy, Attorneys for Petitioner, 303 Delaware Trust Building, Wilmington, Delaware". Below and to the left of these signatures the following names of counsel are typed: "Russell Hardy", "Robert J. Bulkley", "Arthur G. Logan".

The propriety of the application to become a party turns upon the terms of the consent decree. By Section III of that decree Gano Dunn was appointed Trustee for the purposes and with the powers and duties set forth in that section. The decree further provides:

"That within 10 days after the entry of this decree Columbia Oil shall transfer all of its stock now owned and thereafter all stock subsequently acquired in Panhandle Eastern, having present or potential voting rights, to said trustee to hold the legal title to said stock and to exercise all the rights and privileges incidental to the absolute ownership thereof upon the following terms and conditions:

"(a) To vote said stock for the election of as many directors of Panhandle Eastern as the number of shares thereof may be entitled to elect; Provided, that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recommended by the beneficial owner of said stock, in conference

and with the advice of the trustee, and that, as to the directors so selected, the trustee is empowered to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree; subject, however, in this as well as in the exercise of all her powers to the authority of this Court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder;

"(b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree."

The business of a corporation is conducted by its board of directors and officers. The control of Panhandle Eastern was vested in the Trustee. He was one of the directors. He shares with Columbia Oil in the selection of the others. He was empowered to remove any of the other directors and replace such directors by others of his own choosing upon his own motion. As the board of directors chose the officers, the Trustee was the final word in the conduct of the business of Panhandle Eastern. This control should be borne in mind in construing paragraph (b) of the decree.

The selection of Gano Dunn as Trustee was made by the Attorney General of the United States as the person best qualified to serve in a very difficult and exacting position from a group of names submitted to him.

Notice of the regular annual stockholders' meeting of Panhandle Eastern to be held March 11, 1940 was duly sent to stockholders. It notified them that the proposed business to be considered at the meeting would be the election of directors for the ensuing year, an amendment of the certificate of incorporation, and such other business as might properly come before the meeting.

Mindful of paragraph (b) of Section III of the decree, Gano Dunn obtained from the executive head of Columbia Oil, the beneficial owner of the stock of Panhandle Eastern held by him, directions as to voting said stock at the annual meeting. March 5, 1940, Don M. Wilson, a vice president of Columbia Oil and acting president, directed Gano Dunn to vote the shares of stock held by him in favor of the amendment to the articles of incorporation proposed by the Board, and as to other matters, excepting the election of directors, to vote said shares "as, in his discretion, seemed best for the interest of Panhandle Eastern Pipe Line Company and generally to support the management; that, in case any matters were presented at the meeting on which he had any doubt as to how to vote, he could adjourn the meeting for a sufficient time to confer by telephone with the representatives of Columbia Oil & Gasoline Corporation". March 8, 1940, the board of directors of Columbia Oil adopted a resolution expressly approving said directions and also approving a letter from Wilson to Dunn containing the following directions:

"Dear Mr. Dunn:

After consultation with you, as Trustee holding the voting stock in Panhandle Eastern Pipe Line Company, which is owned by this Corporation, and with your advice, we recommend the following individuals for your selection as Directors of Panhandle Eastern Pipe Line Company, and request that you elect them as such by vote of the stock which you hold as Trustee:

Joseph A. Bower,
165 Broadway, New York City

Joe D. Creveling,
90 Broad Street, New York City

Gano Dunn,
80 Broad Street, New York City

Walter G. Mortland,
37 East 64th Street, New York City

Richard C. Patterson, Jr.,
1270 Sixth Avenue, New York City.

Robert C. Winmill,
1 Wall Street, New York City

Very truly yours,

(signed) D. M. Wilson,
Vice President."

Before determining upon the six directors named in the above letter, Columbia Oil in conference with Dunn recommended certain persons as directors and from among the number so recommended Dunn selected the six above named as the six of the nine directors of Panhandle Eastern which the stock beneficially owned by Columbia Oil was entitled to elect.

From the foregoing, it appears that Gano Dunn attended the annual meeting of March 11 girded with his own authority as Trustee, supplemented by all the directions from Columbia Oil that could have been anticipated in the normal course of human events.

March 11, 1940, at the opening of the annual stockholders' meeting, Creveling, President of Panhandle Eastern, took the Chair and called the meeting to order as provided in the by-laws. The Chairman announced the presence of a quorum. Thereupon, Logan, who appeared as a stockholder, moved that Dixon, as associate of Maguire, be made Chairman of the meeting "from this time forward". Creveling declared the motion out of order. Thereupon, Logan took an appeal from the ruling of the Chairman. A vote was taken. Gano Dunn voted to uphold the Chair while Logan and his associates voted the contrary. Creveling announced that his ruling had been upheld.

Shortly thereafter, Logan moved that Article II of the by-laws be amended to read: "The property and business of this corporation shall be managed by its board of directors, consisting of 14 persons."

This drastic action of increasing the number of directors from 9 to 14 was proposed without notice thereof, and evidently with the intent to acquire control of a large and valuable property. The Chairman declared the motion out of order in view of Article 42 of the by-laws, providing that the by-laws may be altered or amended "if notice of the proposed alteration or amendment be contained in the notice of the meeting". An appeal was taken with the same result as in preceding instances.

Motions were made that the Class B stock be not allowed to vote; that officers of the company be chosen by the stockholders; that their salaries be fixed by the stockholders; that Maguire be made president and Tringham treasurer of the company. These motions were disposed of as the others had been. In each instance Dunn voted the majority of the voting stock against the motions, and Logan and his associates voted for the motions.

Hand moved that Panhandle Eastern become a party to the suit of Missouri-Kansas Pipe Line Company and Dammann against the Columbia companies. This motion was similarly disposed of. Hand further moved that the Class A stock of Panhandle Eastern be redeemed. This motion met the same fate.

The following motion concisely states the position of Logan and his associates throughout the meeting: "Mr. President, I now move that this corporation refuse to accept any vote of Mr. Gano Dunn on any question unless he first establishes by competent proof that he has been directed by Columbia Oil and Gasoline Corporation to cast his vote in accordance with the way he may cast it due to the fact that this corporation is aware of the limitation upon his powers."

Later, Hand moved that Panhandle Eastern be directed to bring six suits as suggested in a letter of January 15, 1940 from Missouri-Kansas Pipe Line Company to Panhandle Eastern. The fourth item of this letter was an instruction that Panhandle Eastern intervene in this antitrust suit by the United States pending in this court. At this meeting a resolution was offered by Hand that Panhandle Eastern be directed to make the present application.

Gano Dunn, holding a majority of the voting stock of Panhandle Eastern, voted against the resolution and it was accordingly defeated.

It was further moved: "That this corporation will employ Robert J. Bulkley of Cleveland, Ohio, Russell Hardy of Washington, D. C. and Arthur Logan of Wilmington, Delaware, as its attorneys to take action provided for herein," and further, "that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services."

Thereafter, the meeting adjourned, although as to adjournment Logan objected that Gano Dunn was not qualified to vote without producing before the meeting specific instructions from Columbia Oil.

After adjournment Logan and his associates held a meeting of their own. No quorum was present. Holders of a minority of the stock of Panhandle Eastern, either in person or by proxy, were the only persons present. The motions of Logan and of his associates, defeated at the regular meeting, were resubmitted at the subsequent meeting, and purported to be passed.

March 20, 1940, a special meeting of the Board of Directors of Columbia Oil was held. The Chairman stated that he had received an official stenographic transcript of the proceedings of the annual meeting of stockholders of Panhandle Eastern of March 11, 1940. Upon consideration of those minutes and of the manner which Gano Dunn, Trustee, had voted the stock in Panhandle Eastern, it was resolved: "That all of the votes and all of the positions taken by said Gano Dunn as Trustee or otherwise at said stockholders' meeting be and the same hereby are in all respects approved, ratified and confirmed".

In construing the language of the consent decree, I find that the votes cast by Gano Dunn were authorized by the powers conferred upon him by the consent decree and that his votes were well within the directions given to him by Columbia Oil. From this finding, it follows that the so-called application filed in this proceeding was not author-

ized by Panhandle Eastern or by any responsible body having control of said corporation.

The motion to dismiss the alleged application of Panhandle Eastern for leave to become a party hereto and for other relief must be granted for the following reasons:

1. Said application was not authorized by Panhandle Eastern.

2. The attorneys whose names appear on said application as attorneys for Panhandle Eastern were not authorized by that company to act in its behalf in filing such application.

3. Gano Dunn, Trustee, duly voted the shares of stock of Panhandle Eastern on all matters on which he voted at the annual meeting of March 11, 1940, in accordance with provisions of said consent decree, and pursuant to valid directions from Columbia Oil.

An order may be submitted.

Appendix D.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE THIRD CIRCUIT.

PANHANDLE EASTERN PIPE LINE COMPANY,
Petitioner-Appellant,

UNITED STATES OF AMERICA,
Plaintiff-Respondent,

vs.

COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, CHARLES A. MUNROE, THOMAS R. WEYMOUTH, THOMAS B. GREGORY, EDWARD REYNOLDS, JR., BURT R. BAY and JOHN H. HILLMAN, JR.,
Defendants-Respondents,
Appellees.

Stipulation.

WHEREAS, an application was made in the Court below allegedly on behalf of Panhandle Eastern Pipe Line Company for leave, pursuant to the provisions of Section V of the Decree entered by the Court below on January 29, 1936, to become a party to said cause for the limited purpose of enforcing the rights conferred by Section IV of said Decree, and

WHEREAS, Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation moved to dismiss said alleged application on the ground, among others, that the attorneys whose names appeared thereon as attorneys

for Panhandle Eastern Pipe Line Company were not authorized by that company to act in its behalf in bringing or prosecuting such application, and

WHEREAS, said motion came on to be heard on April 1, 1940, before the United States District Court in the District of Delaware, and on April 23, 1940 an order was entered granting said motion and denying the said alleged application; and

WHEREAS, an appeal from said order was taken to the Supreme Court of the United States on June 14, 1940, which appeal was allowed by said District Court on said date and said appeal is now before said Supreme Court for consideration on appellant's Jurisdictional Statement; and

WHEREAS, a notice of appeal was filed allegedly on behalf of Panhandle Eastern Pipe Line Company to the United States Circuit Court of Appeals for the Third Circuit from said order in order to preserve its alleged rights in the event that the Supreme Court of the United States determines that it does not have jurisdiction on said appeal; and

WHEREAS, the time to file the record on appeal in said Circuit Court of Appeals of the United States may expire prior to the time that the Supreme Court acts upon the question of jurisdiction, unless such time be extended by stipulation of the parties; and

WHEREAS, the appellees, at the request of appellant are willing that such time be extended so as to avoid a duplication of printing and other costs relating to said appeals:

NOW, THEREFORE, IT IS HEREBY STIPULATED AS FOLLOWS:

1. That if the Supreme Court of the United States accepts jurisdiction on the basis of appellant's Jurisdictional Statement on the appeal which was allowed on June 14, 1940, then the appeal to the Circuit Court of Appeals shall be withdrawn and all action necessary to discontinue the same shall be taken.

2. That if the Supreme Court of the United States refuses to entertain jurisdiction on said appeal on the basis of appellant's Jurisdictional Statement, then the time of appellant to file the record on appeal and formally docket the appeal in the Circuit Court of Appeals of the United States for the Third Circuit is hereby extended to and including ten days after the Supreme Court refuses to entertain jurisdiction.

3. That this stipulation shall not be construed as a waiver by any of the appellees herein of their right to assert that the Supreme Court of the United States has no jurisdiction on the appeal taken to that Court or that the Circuit Court of Appeals for the Third Circuit has no jurisdiction on the appeal taken to that Court, irrespective of whether or not the Supreme Court of the United States decides to entertain jurisdiction on th appeal to that Court on the basis of appellant's Jurisdictional Statement.

STEWART LYNCH,
Attorney for United States of America.

C. A. SOUTHERLAND,
Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr. and Burt R. Bay.

HASTINGS, STOCKLY & LAYTON,
By C. R. LAYTON, 3RD,
OK Attorney for Columbia Oil & Gasoline
JBA Corporation and Charles A. Munroe.

CALEB S. LAYTON,
Attorney for John H. Hillman, Jr.

ARTHUR G. LOGAN,
Attorney for Panhandle Eastern Pipe Line Company.

Dated: October 16, 1940.

Appendix £.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

MISSOURI-KANSAS PIPE LINE COMPANY,
Petitioner-Appellant,

UNITED STATES OF AMERICA,
Plaintiff-Respondent,

vs.

COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, CHARLES A. MUNROE, THOMAS R. WEYMOUTH, THOMAS B. GREGORY, EDWARD REYNOLDS, JR., BURT R. BAY and JOHN H. HILLMAN, JR.,
Defendants-Respondents,
Appellees.

Stipulation.

WHEREAS, MISSOURI-KANSAS PIPE LINE COMPANY made an application in the Court below as a stockholder on behalf of Panhandle Eastern Pipe Line Company purportedly acting in accordance with the terms of Section V of a Decree entered by the Court below on January 29, 1936, to become a party to said cause for the limited purpose of enforcing the rights conferred upon Panhandle Eastern Pipe Line Company by Section IV of said Decree, and

WHEREAS, said application came on to be heard on April 23, 1940, before the United States District Court in the District of Delaware, on which date an order was entered denying the said application; and

WHEREAS, an appeal from said order was taken to the Supreme Court of the United States on June 14, 1940, which appeal was allowed by said District Court on said date and said appeal is now before said Supreme Court for consideration on appellant's Jurisdictional Statement; and

WHEREAS, Missouri-Kansas Pipe Line Company filed a notice of appeal to the United States Circuit Court of Appeals for the Third Circuit from said order in order to preserve its alleged rights in the event that the Supreme Court of the United States determines that it does not have jurisdiction on said appeal; and

WHEREAS, the time to file the record on appeal in said Circuit Court of Appeals of the United States may expire prior to the time that the Supreme Court acts upon the question of jurisdiction, unless such time be extended by stipulation of the parties; and

WHEREAS, the appellees, at the request of appellant are willing that such time be extended so as to avoid a duplication of printing and other costs relating to said appeals;

NOW, THEREFORE, IT IS HEREBY STIPULATED AS FOLLOWS:

1. That if the Supreme Court of the United States accepts jurisdiction on the basis of appellant's Jurisdictional Statement on the appeal which was allowed on June 14, 1940, then Missouri-Kansas Pipe Line Company shall withdraw the appeal to the Circuit Court of Appeals and take all action necessary to discontinue the same.

2. That if the Supreme Court of the United States refuses to entertain jurisdiction on said appeal on the basis of appellant's Jurisdictional Statement, then the time of Missouri-Kansas Pipe Line Company to file the record

on appeal and formally docket the appeal in the Circuit Court of Appeals of the United States for the Third Circuit is hereby extended to and including ten days after the Supreme Court refuses to entertain jurisdiction.

3. That this stipulation shall not be construed as a waiver by any of the appellees herein of their right to assert that the Supreme Court of the United States has no jurisdiction on the appeal taken to that Court or that the Circuit Court of Appeals for the Third Circuit has no jurisdiction on the appeal taken to that Court, irrespective of whether or not the Supreme Court of the United States decides to entertain jurisdiction on the appeal to that Court on the basis of appellant's Jurisdictional Statement.

STEWART LYNCH,
Attorney for the United States of America.

C. A. SOUTHERLAND,
Attorney for Columbia Gas & Electric Corporation, George H. Howard, Philip G. Gossler, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr. and Burt R. Bay.

HASTINGS, STOCKLY & LAYTON,
By C. R. LAYTON, 3RD,
OK JBA
Attorney for Columbia Oil & Gasoline Corporation and Charles A. Munroe.

CALEB S. LAYTON,
Attorney for John H. Hillman, Jr.

ARTHUR G. LOGAN,
Attorney for Missouri-Kansas Pipe Line Company.

Dated: October 16, 1940.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 268

MISSOURI-KANSAS PIPE LINE COMPANY,
Appellant,

v.

THE UNITED STATES OF AMERICA,
COLUMBIA GAS & ELECTRIC CORPORATION,
COLUMBIA OIL & GASOLINE CORPORATION,
ET AL.

No. 269

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,

v.

THE UNITED STATES OF AMERICA,
COLUMBIA GAS & ELECTRIC CORPORATION,
COLUMBIA OIL & GASOLINE CORPORATION,
ET AL.

Appeals from the District Court of the United States for the District of Delaware

BRIEF FOR THE CITY OF DETROIT, AS *AMICUS CURIAE*

PAUL E. KRAUSE,
Corporation Counsel,
JAMES H. LEE,
Assistant Corporation Counsel
Attorneys for the City of Detroit.

301 City Hall Building,
Detroit, Michigan.

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ET AL.

Appeals from the District Court of the United States for the District of Delaware

BRIEF FOR THE CITY OF DETROIT, AS *AMICUS CURIAE*

The City of Detroit respectfully asks that this Brief, filed as *Amicus Curiae*, pursuant to Supreme Court Rule 27 (9), be considered by the Court on this appeal.

STATEMENT OF THE CASE

The City of Detroit concurs in the "Statement of the Case" set forth in Appellants' Brief. In addition to the facts therein stated, it should be noted that after the United States had found the Consent Decree of January 29, 1936 to be ineffective (R. 280) and after the Attorney General had moved for additional and more effective relief (R. 334), the corporate defendants, Columbia Gas & Electric Corporation and its subsidiary, Columbia Oil & Gasoline Corporation, proposed a "Plan" for the stated purpose of eliminating any illegal control by them over Panhandle Eastern (R. 356, 397).

Briefly stated, the Plan was to separate Columbia Oil from its parent, Columbia Gas, but to permit Columbia Oil to retain control of Panhandle Eastern Pipe Line Company subject to one proviso, namely, that for the next five years the Panhandle Eastern directors who were elected by Columbia Oil should not be "objectionable to the Department of Justice" (R. 360). As the Plan perpetuates in Columbia Oil control over Panhandle Eastern it becomes important to know who controls Columbia Oil.

It is alleged by Missouri-Kansas Pipe Line Company, and not denied, that at the 1939 Columbia Oil annual meeting the Columbia Oil management cast 99.9% by management proxies of all votes and that 82.9% of that vote represented stock owned by persons who are also stockholders of Columbia Gas (R. 534). Columbia Oil was initially organized by Columbia Gas for the purpose of holding certain of the properties and securities of Columbia Gas. The original Board of Directors of

Columbia Oil were selected by Columbia Gas and its officers and directors. The management thus put in charge of Columbia Oil by Columbia Gas at its inception has perpetuated itself in control of Columbia Oil at all times since its organization through the solicitation of management proxies and the use of said proxies to continue the same management in office (R. 418).

The Special Master who considered the Plan points out the substantial identity of stockholders of Columbia Gas and Columbia Oil, and, while approving the Plan, warns that because of such identity of ownership the Plan "cannot be regarded as certain to accomplish the purpose of the Consent Decree" (R. 377). The Special Master found that the Columbia Oil stock was originally distributed by Columbia Gas in 1930 to its common stockholders as a stock dividend and at the present time, 68% of Columbia Oil stockholders own common stock of Columbia Gas (R. 377). He found that no evidence was presented as to how many other Columbia Oil stockholders own other Columbia Gas securities, either preferred stocks or debentures (R. 377).

He does find, however, that the percentage necessary to constitute a quorum for meetings of stockholders of Columbia Oil is 33 1/3% or 778,942 shares, so that 389,472 shares would constitute a majority at a meeting with a quorum present. He found that persons closely identified with Columbia Gas have a total of something over 329,000 shares, excluding stock of Mr. Gossler (President of Columbia Gas) amounting to 75,872 shares, which under the Plan Gossler must sell. The Referee says:

> " * * * no attempt was made to show the holdings of persons, such as close relatives, not living in

the same house, friends or business associates, not included in this narrow classification but who might be expected to follow the wishes, advice or example of the persons whose stock holdings were disclosed. I do not imply that it would have been possible to submit data showing such holdings *but, the burden being on the proponents of the plan, I am not willing to assume that such persons, who might vote their stock in favor of Columbia Gas rather than Columbia Oil where there was a conflict of interest, do not hold a substantial amount.* (Italics added.)

"There is not included in the tabulation above the stock held in the 'Street' names of Coggeshall and Hicks, Gude, Winmill & Co., Jessup and Lamont, or W. E. Hutton, though the holdings of these brokers appeared in Columbia Oil Exhibit 2 and Missouri-Kansas argues that on account of the close connection between these firms and Columbia Gas, it would be reasonable to assume that much of the stock in these names might be voted in the interests of Columbia Gas, which may be true. If such an assumption were accepted, 113,517 shares would be added to the holdings listed above making a total of 329,392 shares, excluding Mr. Gossler's" (R. 376, 377).

The City of Detroit opposed this Plan (R. 395) and filed exceptions to the Master's Report (R. 406).

THE INTEREST OF THE CITY OF DETROIT

This Court will take judicial notice that the City of Detroit, according to the last census, is the fourth largest city in the United States. At the present time there are only two sources of natural gas supply that might be available to the City, namely, Appalachian gas, through the Columbia Gas & Electric system, and Texas gas, through the Panhandle Eastern Pipe Line Company (Map R. 540 D). Detroit is now served by Texas gas delivered through the Panhandle Eastern pipe line as far as Dana (near the Illinois-Indiana line) and from Dana to Detroit by a wholly owned subsidiary of Columbia Gas, namely, Michigan Gas Transmission Company. The contract under which gas is purchased by the Detroit City Gas Company provides in paragraph 8 of Article II that, if an adequate supply of natural gas to meet the requirements of Detroit City Gas Company is developed by responsible parties other than Panhandle Eastern and is made available to Detroit City Gas Company at a lower price than that charged by Panhandle Eastern, then the contract between the distributing company and Panhandle Eastern may be terminated if Panhandle Eastern does not meet the lower price within six months (R. 196).

The City is itself a large user of gas, and it is in the interest of the City as a whole that a large supply of natural gas be made available to its citizens for industrial, commercial and domestic use at the lowest possible price. It is obvious, of course, that so long as Columbia Gas controls both sources of supply, there will be no competition between them and this is obviously to the

disadvantage of consumers in the City of Detroit. Accordingly it is to the interest of Detroit that Panhandle Eastern should be placed in that position which the United States and the defendants originally stipulated it should be, namely:

> "* * * in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others" (R. 143).

The United States found that the decree was ineffectual to accomplish that declared purpose as is seen from the two petitions filed by the Attorney-General on January 12, 1939 (R. 274) and the "Amended and Supplemental Complaint" filed May 15, 1939 (R. 334) wherein it is stated that "not only has said Consent Decree failed to nullify those elements of control over Panhandle Eastern by Columbia Gas which existed at the time of the entry thereof, but Columbia Gas has actually strengthened its position of control since that date * * *" (R. 340).

On June 20, 1940 Columbia Gas and Columbia Oil filed the so-called Plan to which reference is made elsewhere in this brief (R. 356).

The City of Detroit sought to intervene in the proceedings wherein the Plan was considered, but its application was denied. It was permitted to appear as *amicus curiae*. The City of Detroit did so appear, and filed objections to the report of the Special Master (R. 406).

None of the provisions of the Plan itself are before this Court because the City of Detroit was not permitted

to intervene in the proceedings in which it was considered, and as *amicus curiae*, has no right of appeal from the order approving it. The same is true with respect to Mokan. *It sought to intervene twice* (R. 321, 371). There is therefore no way in which the Plan itself can be brought before this Court, even though it flouts every other anti-trust decision which this Court has ever made, as is shown by the brief of Mokan which was filed in the District Court in opposition to the Plan and which is annexed hereto as an appendix to this brief. The City of Detroit regards the Plan as inadequate and ineffective.

The City of Detroit also believes that the connecting link between the Panhandle Eastern Pipe Line and the City of Detroit is an integral part of the Panhandle Eastern Pipe Line and properly belongs to Panhandle Eastern (R. 148).

It is to the interest of the City of Detroit that a competitive source of supply of natural gas be available (Map R. 540D) not alone for domestic needs, but for its ordinary everyday industrial uses and that Panhandle Eastern be managed and controlled by those persons who are free to sell gas at competitive prices without regard to the maintenance of price structures in the adjoining territories served by the Columbia Gas system (Map R. 540C). The citizens of Detroit are entitled to the benefits that flow from competitive enterprise.

ARGUMENT

I. The Retention By Columbia Oil & Gasoline Corporation of Certain Securities Which Now Enable it to Control Panhandle Eastern Is Illegal.

It is a premise of this brief that the individuals who control Columbia Gas also control Columbia Oil. Therefore, the City of Detroit is in complete disagreement with the statement with which the Department of Justice concludes its brief, that

> "The plan approved by the District Court and accepted by the Government is believed to be a practical solution to the difficulties arising from the complex relationships of the parties concerned.
>
> (c) Accordingly, if this Court should go beyond the narrow questions apparently considered by the court below upon these applications, we respectfully submit that they should be considered in the light of the supplementary proceedings and that no disposition of the applications should be made here that would be inconsistent therewith."

The questions now presented to this Court are not narrow. They go to the fundamental matter of control of Panhandle Eastern Pipe Line. In the opinion of the City of Detroit, the proper determination of that question is vital to the interests of the citizens of Detroit.

At present Panhandle Eastern is controlled by Columbia Oil through the ownership of the following Panhandle Eastern securities:

(a) 404,326 shares, or 50.08% of the total outstanding shares of common stock; and

(b) 10,000 shares of Class B Preferred which has the right to elect two directors.

If the above described securities or any part of them were illegally and improperly acquired by Columbia Oil, then Columbia Oil should be required to surrender them. In that event the deficiencies in the present Plan would be less material because Columbia Oil would not own control of Panhandle Eastern.

The petitions herein allege that 80,000 shares of common stock of Panhandle Eastern out of the above mentioned 404,326 were acquired by Columbia Oil in violation of the provisions of the Consent Decree. If this claim were to be sustained it would mean that Columbia Oil must surrender that 80,000 shares for some other type of non-voting security and in consequence the control which it now exercises over Panhandle Eastern by virtue of its majority ownership of the common stock would be removed.

The Petition alleges that the 10,000 shares of Class B Preferred Stock was also illegally acquired by Columbia Oil in violation of the express provisions of the consent decree. If this claim be sustained, then Columbia Oil would have to surrender that stock and in consequence any control now exercised by virtue of it would also be removed.

A decision on these matters as well as on the ownership of the Detroit extension (which is hereinafter dealt with) is of paramount importance to the City of Detroit, because the City believes that the Plan is wholly ineffectual to remove the restraint heretofore practiced on Panhandle Eastern. There is such an identity of stockholders of Columbia Gas and Columbia Oil that to continue the existence of Panhandle Eastern control by Columbia Oil confirms in those persons who control both Columbia Oil and Columbia Gas the perpetual right,

under Government sanction, to restrain Panhandle Eastern in violation of the anti-trust laws.

As one example of the weakness of the Plan, we desire to point out how the Columbia Oil stockholdings of Philip G. Gossler, and of his wife and daughter, are dealt with. Gossler was originally the President of both corporate defendants and is now Chairman of the Board of Columbia Gas (R. 111, 375); he is perhaps the principal individual defendant in this action. The Special Master found that Gossler owns large blocks of both Columbia Oil and Columbia Gas, and also found that Mrs. Gossler and Mrs. Clay, the daughter of Mr. Gossler, are owners of substantial amounts of Columbia Oil stock (R. 375). The proposed decree provides that Gossler shall sell his Columbia Oil stock within five years from the date of the amended decree, being meantime enjoined from voting any such shares; but as to Mrs. Gossler and Mrs. Clay, the decree merely provides that Mr. Gossler shall be enjoined from "*suggesting how any shares of such stock owned by any of his relatives should be voted*" (R. 357). *Who is to police Mr. Gossler's suggestions to his own wife and daughter?* It is submitted that this is not the sort of protection against monopoly to which the citizens of Detroit are entitled!

The Master also finds that there are substantial blocks of Columbia Oil held by persons closely affiliated with Columbia Gas, but no provision, either to sterilize or distribute them, is made. It therefore becomes increasingly important and far from a "*narrow question*" to determine whether or not the control of Panhandle Eastern Pipe Line was properly and legally acquired by Columbia Oil, and whether or not such control should be perpetuated. This can only be done through a hearing on the petitions which are now before this Court.

II. The Connecting Link Between the City of Detroit and the Eastern Terminus of Panhandle Eastern Was Improperly Acquired by Columbia Gas & Electric Corporation and Should Be Returned to Panhandle Eastern Pipe Line Company.

At the time the Consent Decree was entered there was no connecting link between Dana, where the Panhandle Eastern line then ended, and the City of Detroit (Map-R. 540C). However, prior to the entry of the Decree, the Detroit City Gas Company, which distributes the natural gas in the City of Detroit, had made a contract with Panhandle Eastern, dated August 31, 1935, for the purchase of "all of the natural gas requirements" of the Detroit City Gas Company for distribution and sale to any and all of its present and future customers and for its own use (R. 193). The contract further provided that its carrying out was dependent upon the construction of a connecting pipe line and reinforcement of the existing main line of Panhandle Eastern and Panhandle Eastern agreed to use its best efforts towards financing the construction of said connecting line (R. 195).

The Decree contemplated this construction and provided, referring to the Detroit contract, that if "financial assistance be secured from Columbia Gas * * * such financial assistance (may be) furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas * * * any rights of ownership in the works or properties of Panhandle Eastern, except as security for the investment" (R. 148). The defendant Columbia Gas nevertheless proceeded to cause a series of contracts to be made between Panhandle Eastern and a wholly owned

subsidiary of Columbia Gas (Michigan Gas Transmission Corporation) by which the following occurred:

(1) Columbia Gas constructed for its own benefit a connecting line between Dana and the City of Detroit (called the Michigan Gas Transmission line) (R. 157).

(2) Michigan Gas Transmission Company transports *all* of the gas which is sold to Detroit City Gas Company (R. 162-164).

(3) Any other gas which Panhandle Eastern might have for sale at points east of Dana, i. e. in either the Indiana or Michigan markets, must be transported through Michigan Gas Transmission Co. (R. 165).

(4) Michigan Gas Transmission Company bills to and collects from the Detroit City Gas Company the total purchase price of all gas sold by Panhandle Eastern, and after deducting its own proportion, pay over the balance to Panhandle Eastern (R. 178).

To all practical intents and purposes, Columbia Gas, through ownership of said connecting link and by virtue of the March 17, 1936 contract, came in complete control of all gas which Panhandle Eastern had for sale at any point east of Dana, just as surely as if it owned the entire Panhandle Eastern system. Regardless of control of Panhandle Eastern, the ownership of the Detroit Extension gave control over the markets. The extent to which such control has been extended is vividly portrayed by the Maps re-produced at pages 540B-540D of the Record. From an examination of these Maps it will be seen that at the date the Decree was en-

tered, the defendants Columbia Gas had no markets, with minor exceptions in Indiana and none at all in Michigan. At the date when the petition herein was filed Columbia had extended its area to the extent shown by the Map re-produced on page 540D. The City of Detroit finds it impossible to understand how such expansion could be had in the face of a Decree providing that its purpose was to restore Panhandle Eastern to a position of free and independent action. Certainly, if the decree had freed Panhandle Eastern from restraint, one would not expect to find that it had never progressed a single inch from the point at which it was located when the Decree was entered. The end of the Panhandle Eastern line *was Dana, is Dana,* and the City of Detroit believes that it *will continue to be Dana* so long as the Columbia Gas System can exercise any control over its expansion. The record does show that Columbia Gas owns the extension but the record is barren of any of the details surrounding the transaction. The fact is that Columbia Gas was forbidden to acquire any works or properties of Panhandle Eastern. The fact remains that Columbia now owns the connecting line. The petitions herein allege that the acquisition was illegal. It is respectfully urged that this question, so important to the consumers of Detroit, should be determined on its merits, and not decided on any question of technical procedure.

III. The Appellees' Briefs.

The questions raised by the Appellees relate wholly to procedural questions. At no point is an effort made to meet the issues on the merits. The City of Detroit respectfully urges that in the interests of justice to its citizens, there should be a determination on the merits

of Columbia's right to retain the securities and connecting pipe line which are alleged to have been improperly acquired, and through which it can perpetually control Panhandle Eastern, the natural gas supply to the City of Detroit.

Respectfully submitted,

PAUL E. KRAUSE,
Corporation Counsel,

JAMES H. LEE,
Assistant Corporation Counsel,
Attorneys for the City of Detroit.

APPENDIX A

IN THE

Distfict Court Of The Unitéd States

FOR THE DISTRICT OF DELAWARE

In Equity No. 1099

UNITED STATES OF AMERICA,

Petitioner,

v.

COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, *et al.*,

Defendants.

BRIEF OF MISSOURI-KANSAS PIPE LINE COMPANY, AS *AMICUS CURIAE*

No precedent has been cited and none will be found to support such a Plan as is here proposed for the dissolution of an illegal combination in restraint of trade. No case will be found in which the corpus of illegally acquired stock has been permitted, as here, to remain intact in the possession of the very corporation which illegally acquired it.

If the Court approves the Plan here proposed it will not only be moving without supporting precedent, but will have to set its face against the accumulated body of law and the decisions of the United States Supreme Court over the 50-year period in which the anti-trust laws have been in effect.

Proceedings Heretofore Had

The United States instituted proceedings in March, 1935, against the defendants herein named, under the Sherman and Clayton Acts. The principal transaction complained of was the acquisition by the defendants (through the medium of Columbia Oil & Gasoline Corporation) of the controlling securities of Panhandle Eastern Pipe Line Company, and the use of that stock control to restrain trade and commerce.

A Consent Decree was entered in this Court against the defendants on January 29, 1936, by which, with their consent, the defendants were enjoined against further restraint of Panhandle Eastern. The Panhandle Eastern stock was placed in the custody of Gano Dunn, as Trustee. No restriction was imposed on the payment or receipt of dividends on the Panhandle Eastern stock, nor on voting, excepting only that the Trustee who was appointed to hold the stock was to elect himself as one of the Panhandle directors and to elect the remainder from among persons recommended by one of the defendants (Columbia Oil).

That Decree having failed to end the restraint, a Plan purporting to effect the dissolution of the unlawful combination was proposed in this Court and referred to a Special Master whose Report has been filed.

The Plan is said by the defendants to effect a complete separation between the defendants Columbia Oil and Columbia Gas. If consummated; Columbia Gas & Electric Corporation *as such* will divest itself of all voting stock in Columbia Oil, but will continue to own all of the Columbia Oil debt which may be a minimum of $11,000,000

or a maximum of $23,000,000. Columbia Gas stockholders own 68% of the common stock of Columbia Oil and consequently control it. While this 68% is spread among a total of about 17,000 stockholders, *the actual control* is in the hands of only 370 of those stockholders, who own 33.2% of Columbia Oil stock (Columbia Gas & Electric Corporation Exhibit 9). Under the Plan Columbia Oil will have no property or assets of any kind except its controlling securities of Panhandle Eastern.

Looking at it in another way, if the Plan be consummated Columbia Oil will really be nothing but another name for Panhandle Eastern, *because Columbia Oil's only asset will be control of Panhandle Eastern.* Under the Plan the same stockholders who own Columbia Gas will control Columbia Oil and therefore control Panhandle Eastern. Thus only the fiction of corporate entities will distinguish these Columbia Corporations from each other.

There is a further provision of the Plan that directors of Columbia Oil shall be elected who are not objectionable to the Department of Justice for a period of five years.

POINT I.

The Plan is violative of every existing authoritative precedent in similar cases and fails to create a condition honestly in harmony with the law.

The following list contains all the so-called corporate combination cases brought by the Government under the anti-trust laws during the fifty years from the enactment of the Sherman Act in 1890 to the present time. Corporate combination cases are those in which the control of corporations or businesses has been effected by acquisition of stock, properties, or other securities.

The list shows a total of 29 such cases. In five the complaint was dismissed and in one the Government failed to make out a corporate combination case. In the 23 remaining cases, in which the Government has been successful, the decrees have required a divestiture of stocks, properties, bonds, liens, leases, etc., for the purpose of effecting a complete dissolution of the combinations into the several independent parts originally existing.

1. *U. S. v. E. C. Knight Co.*, 60 Fed. 306; 60 Fed. 934; 156 U. S. 1. Dismissed.
2. *U. S. v. Northern Securities Co.*, 120 Fed. 721; 193 U. S. 197. Contested decree, March 14, 1904.
3. *U. S. Standard Oil Co.*, 173 Fed. 177; 221 U. S. 1. Contested decree, July 29, 1911.
4. *U. S. v. American Tobacco Co.*, 164 Fed. 700; 221 U. S. 106. Contested decree; Nov. 16, 1911.
5. *U. S. v. Du Pont Co.*, 188 Fed. 127. Contested decree, June 13, 1912.
6. *U. S. v. Union Pacific R. R. Co.*, 188 F. 102; 226 U. S. 61; 226 U. S. 470. Contested decree, June 30, 1913.
7. *U. S. v. Great Lakes Towing Co.*, 208 Fed. 733; 217 Fed. 656. Relief refused—no corporate combination case made out.
8. *U. S. v. American Sugar Refining Co.*, Southern District, New York. Consent decree, May 9, 1922.
9. *U. S. v. Lake Shore Ry. Co.*, 203 Fed. 295. Contested decree, March 14, 1914.
10. *U. S. v. U. S. Steel Corporation*, 223 Fed. 55; 251 U. S. 417. Dismissed.
11. *U. S. v. United Shoe Machinery Co.*, 222 Fed. 349; 247 U. S. 32. Dismissed.

12. *U. S. v. International Harvester Co.*, 214 Fed. 987. Contested decree, Nov. 2, 1918.

13. *U. S. Corn Products Co.*, 234 Fed. 964. Contested decree, Nov. 13, 1916.

14. *U. S. v. Eastman Kodak Co.*, 226 Fed. 62. Contested decree, June 20, 1916.

15. *U. S. v. Quaker Oats Co.*, 232 Fed. 499. Dismissed.

16. *U. S. v. Reading Co.*, 226 Fed. 229; 253 U. S. 26. Contested decree, June 6, 1921.

17. *U. S. v. American Can Co.*, 230 Fed. 859; 234 Fed. 1019. Dismissed.

18. *U. S. v. Southern Pacific Co.*, 239 Fed. 998; 259 U. S. 214. Reorganization approved by Interstate Commerce Commission.

19. *U. S. v. Lehigh Valley R. R. Co.*, 225 Fed. 399; 254 U. S. 255. Contested decree, Nov. 7, 1923.

20. *U. S. v. New York, New Haven & Hartford R. R.*, Southern District, New York. Consent decree, Oct. 7, 1914.

21. *U. S. v. New England Fish Exchange*, District of Mass., 258 Fed. 932. Contested decree, Dec. 4, 1919.

22. *U. S. v. Swift & Co.*, Supreme Court, District of Columbia. Consent decree, Feb. 27, 1920.

23. *U. S. v. Cement Securities Co.*, District of Colorado. Consent decree, Dec. 13, 1924.

24. *U. S. v. Ward Food Products Co.*, District of Maryland. Consent decree, April 3, 1926.

25. *U. S. v. National Food Products Corporation*, Southern District, New York. Consent decree, March 4, 1926.

26. *U. S. v. Rand Kardex Bureau*, Southern District, New York. Consent decree, Dec. 9, 1926.

27. *U. S. v. Fox Theatres Corporation*, Southern District, New York. Consent decree, April 15, 1931.

28. *U. S. v. Foster & Kleiser Co.*, Southern District, California. Consent decree, March 13, 1931.

29. *U. S. v. Radio Corporation of America*, District of Delaware. Consent decree, Nov. 21, 1932.

THE NORTHERN SECURITIES CASE.

The plan is inconsistent with *United States v. Northern Securities Co.*, 120 Fed. 721, 193 U. S. 197 (the second corporate combination case under the antitrust laws, and the first of such cases in which the Government prevailed). In that case the Northern Securities Company had acquired 96 per cent of the stock of the Northern Pacific Company and 76 per cent of the Great Northern Company, two great competitive railroads, serving the public in the territory from Duluth, St. Paul and Minneapolis across the continent to Puget Sound. The par value of the acquired stocks was about $250,000,000, which is much greater than the market value at this time of the Panhandle stock. It will be observed that the Northern Securities Company was a holding company and not an operating company. And it will be remembered that the Plan proposes to change Columbia Oil from an operating to a holding company, having as its only asset the Panhandle Eastern securities.

In the *Northern Securities* case a decree was entered against the defendants prohibiting the voting of the Great Northern and Northern Pacific stock, the payment and receipt of dividends thereon, the election of directors by vote of the acquired stock, and the exercise of any direction or influence over the management of the two railroad companies.

These provisions were effective in the *Northern Securities* case to force a divestiture and restoration of the two railroad companies to a status of independence, because, as stated by the Supreme Court in *Harriman v. Northern Securities Co.*, 197 U. S. 244, the prohibitions of the decree rendered the continued ownership of the shares "useless" to the Securities Company. This was in purpose and effect an order of complete divestiture.

The only concession granted by the court was the permission for distribution of the illegally acquired (*i. e.*, the Northern Pacific and Great Northern Railway Co.) stock among the stockholders of the Securities Company, stated in the decree as follows:

> " * * * nothing herein contained shall be construed as prohibiting the Northern Securities Company from returning and transferring to the stockholders of the Northern Pacific Railway Company and the Great Northern Railway Company, respectively, any and all shares of stock in either of said railway companies which the said Northern Securities Company may have heretofore received from such stockholders in exchange for its own stock; * * * ". (120 Fed. 721, 732).

The Plan in the present case is defended on the ground that the community of interest (*i. e.*, the identity of stockholders in Columbia Oil and Columbia Gas) which will exist when the changes proposed by the Plan shall have been made is in accordance with the Northern Securities and other cases. In the *Northern Securities* case, the decree sterilized and rendered useless the illegally acquired securities through enjoining receipt of dividends, voting, etc. of the stock and then merely permitted ratable distribution, but under this Plan there is neither injunction nor distribution. Even ratable distribution has

not been permitted in every case, as we will show, but in that case was justified for special reasons. First, because it prevented the existence of another unlawful restraint. This is shown by the case of *Harriman v. Northern Securities Co.*, 197 U. S. 244, which was a sequel to the Government case. Harriman and the Union Pacific Company had together transferred shares of the Northern Pacific which carried control of that company; and they insisted that instead of a participation in the ratable distribution of the stock of both railroad companies they should have back all the Northern Pacific stock which they had originally contributed. The Court refused, because (1) it would be inequitable to the other Securities Co. stockholders and (2) that it would have established an unlawful control of the Northern Pacific and the Union Pacific. It said:

> "And it is clear enough that the delivery to complaints of a majority of the total Northern Pacific stock and a ratable distribution of the remaining assets to the other Securities stockholders would not only be in itself inequitable, but would directly contravene the object of the Sherman Law and the purposes of the Government suit.
>
> The Northern Pacific system, taken in connection with the Burlington system, is competitive with the Union Pacific system, and it seems obvious to us, the entire record considered, that the decree sought by complainants would tend to smother that competition" (197 U. S. 297).

It is evident, therefore, that ratable distribution was permitted because of the special situation with regard to the Harriman and Union Pacific stock.

Secondly, another special situation which supported ratable distribution in the *Northern Securities* case was that

the forced sale of several hundred millions of stock would have produced seriously harmful results. In the *Harriman* case the Court said:

> "Doubtless it became the duty of the Securities Company to end a situation that had been adjudged unlawful, and this could be effected by sale and distribution in cash, or by distribution in kind, and the latter method was adopted, and wisely adopted, as we think, for the forced sale of several hundred millions of stock would have manifestly involved disastrous results" (197 U. S. 299).

No special situation in this case has been shown to this court to even support an approval of a ratable distribution of the Panhandle Eastern stock. No assertion, and no factual showing, has been made, *or could be made,* to this court by the defendants that the slightest loss or hardship will result from complete and absolute divestiture of the Panhandle stock by outright sale. Passing to the court of total responsibility for approval of the Plan strongly argues that no such showing has been made to the Attorney General.

But these defendants under the Plan are not even proposing a ratable distribution of the Panhandle stock. No action whatever to accomplish a diffusion of the Panhandle stock into a general community of ultimate stockholders is provided for under the Plan. Instead, the Plan proposes that the unlawfully acquired Panhandle stock shall be permanently consolidated in the agency used by the defendants for its original unlawful acquisition, namely, Columbia Oil & Gasoline Corporation. Columbia Oil was in the beginning, has since continued, and now is, merely the common corporate trustee designated to act for the defendants in holding the Panhandle stock. It was used as a mere custodian of that stock. To leave

that stock so consolidated will be to countenance unlawful acts and permit an unlawful condition to continue, *because it is the consolidation of that stock for the benefit of the* SAME BODY OF STOCKHOLDERS *which caused and which will continue the restraint.* The Supreme Court pointed this out in condemning a similar device in the *Northern Securities* case. 193 U. S. 197, in the following words:

> "What the Government particularly complains of, indeed, all that it complains of here, is the existence of a combination among the stockholders of competing railroad companies which in violation of the act of Congress restrains interstate and international commerce through the agency of a common corporate trustee designated to act for both companies in repressing free competition between them. Independently of any question of the mere ownership of stock or of the organization of a state corporation, can it in reason be said that such a combination is not embraced by the very terms of the Anti-Trust Act?" (p. 335).
>
> "* * * the defendant Morgan. In his testimony he was asked, 'Why put the stocks of both these (constituent companies) into one holding company?' He frankly answered: 'In the first place, this holding company was simply a question of custodian, because it had no other alliances.' That disclosed the actual nature of the transaction, which was only to organize the Northern Securities Company as a holding company, in whose hands, not as a real purchaser or absolute owner, but simply as a custodian, were to be placed the stocks of the constituent companies—such custodian to represent the combination formed between the shareholders of the constituent companies * * * " (p. 354).

The Plan proposes to convert Columbia Oil into a holding company to act simply as a custodian and simply

and solely to hold control of Panhandle Eastern in the manner and for the purpose thus condemned by the Supreme Court.

The great vice of the Plan is that it does not touch the cause of the restraint of trade. It permits the continuance of a control of Panhandle which inevitably produces the unlawful condtion which the anti-trust laws aimed to prevent. Such a control and such results were referred to by a three-judge special court in the *Northern Securities* case as follows:

> "It is pertinent, therefore, to inquire in what way the existing combination that has been formed does affect interstate commerce. It affects it, we think, by giving to a single corporate entity, or, more accurately, *to a few men acting in concert and in its name and under cover of its charter,* the power to control all the means of transportation that are owned by two competing and parallel railroads engaged in interstate commerce; in other words, the power to dictate every important act which the two companies may do, to compel them to act in harmony in establishing interstate rates for the carriage of freight and passengers, and generally to prescribe the policy which they shall pursue. It matters not, we think, through how many hands the orders come by which these aims are accomplished, or through what channels. The power was not only acquired by the combination, but it is effectually exercised, and it operates directly on interstate commerce, notwithstading the manner of its exercise, by controlling the means of transportation, to wit, the cars, engines, and railroads by which persons and commodities are carried, as well as by fixing the price to be charged for such carriage." (120 Fed. 724 at 728).

The same thought was expressed in the same case by the Supreme Court as follows:

> "Those who were stockholders of the Great Northern and Northern Pacific and became stockholders in the holding company are now interested in preventing all competition between the two lines, and as owners of stock or of certificates of stock in the holding company, they will see to it that no competition is tolerated. They will take care that no persons are chosen directors of the holding company who will permit competition between the constituent companies" (193 U. S. 327).

The cause and effect dealt with in the *Northern Securities* case are similar to the cause and effect shown in the present case. They are the acquisition of stock control of one corporation by another and a resulting restraint. Such cause and effect do not turn upon variant economic views. They do not depend upon the changing opinions of men. They are not true at one time and false at another. They have been the subject of study, debate, consideration and decision by the great lawyers and the great judges of the Nation in the cases above listed, and it has been found that the most effective remedy is complete and absolute divestiture.

We point out particularly that *minimum application* of the rule of the *Northern Securities* case would require a ratable distribution by Columbia Oil to its stockholders of the Panhandle Eastern stock.

The Standard Oil Co. Case.

The Plan is inconsistent with *United States v. Standard Oil Co.*, 173 Fed. 177; 221 U. S. 1. In that case the defendants had during a period of twenty to thirty

years acquired the stocks of about 70 subsidiary corporations, referred to by the Supreme Court as constituting "a vast amount of property". The combination was capitalized at $100,000,000.

After finding the combination to be violative of the anti-trust laws, the Court laid down the rule with regard to the remedy as follows:

> "* * * to meet the situation with which we are confronted the application of remedies twofold in character becomes essential: 1. To forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute. 2. The exertion of such measure of relief as will *effectually dissolve the combination* found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about" (pp. 77-78). (Italics ours.)

A decree was thereupon entered which prohibited the defendants from voting the stock of the subsidiary companies, from paying or receiving dividends, and exercising any direction or influence over the companies. As in the *Northern Securities* case, these prohibitions, by destroying the essential attributes of the stock, rendered it useless to the defendants, and forced a divestiture. Ratable distribution was permitted, the decree providing as follows:

> "But the defendants are not prohibited by this decree from distributing ratably to the shareholders of the principal company the shares to which they are equitably entitled in the stocks of the defendants corporations that are parties to the combination."

It is contended that the Plan in this case is like the ratable distribution in the *Standard Oil* case. But there is a vast and vital difference. In that case the stock of the acquired companies was diffused amongst a large body of stockholders. In this case the Plan does not even touch the illegally acquired stock.

That the community of interest which exists with regard to Columbia Gas and Columbia Oil will prevent the "effectual dissolution" referred to in the *Standard Oil* case, so long as the Panhandle stock remains consolidated in any affiliated company, is shown by the following. It was thought at the time the Standard Oil decree was entered that a community of interest in the stockholders would be consistent with a removal of the restrictive conditions. The theory was, as stated by the Federal Trade Commission, that the community of interest of stockholders would itself disintegrate, in this wise:

> "* * * the change of the ownership of Standard interests from stockholdings in a single company to holdings of stock in many companies with differing possibilities and earning powers was sure in the course of years to disperse this control as individuals found it desirable to dispose of part of their holdings or as death necessitated distribution of them, or to dilute it as expansion of the industry required the use of new capital. (Report of Federal Trade Commission, entitled Prices, Profits and Competition in the Petroleum Industry, December 1927, Senate Document No. 61, 70th Congress, 1st session; pp. 67-70.)

But this result did not come to pass. Fifteen years after the entry of the Standard Oil decree the Federal Trade Commission made an investigation relative to the efficacy of that decree. It found that in 1915, four years after

the entry of the decree: "The stockholders of all of those companies are to a large extent the same individuals or interests." Nor did the expected disintegration occur in any substantial degree during the following 11 years. (See the tabulation on page 70 of the report.) The failure of distintegration was coincident with the failure to restore competitive conditions. As of 1926 the Trade Commission said that "Each Standard marketing company, following the practice of the organization before the dissolution, still confined its operations to a specific field bounded by the State lines", with "the effect of obtaining the highest price possible for the output of the group as a whole".

If a community of interest thus largely nullified the decree in the *Standard Oil* case, for stronger reason will the present Plan be totally ineffectual to establish a condition in harmony with the law.

Minimum application of the rule of the *Standard Oil* case would not permit Columbia Oil to retain its Panhandle Eastern stock, but would require its ratable distribution among Columbia Oil stockholders.

The American Tobacco Case.

The Plan is inconsistent with *United States v. American Tobacco Company*, 221 U. S. 106. In that case the defendants had during a period of twenty years consolidated 65 or more companies, individual businesses and corporations under the American Tobacco Company. The combination was capitalized at about $180,000,000.

The Supreme Court did not consider that the complex commingling of the business and affairs of these many

companies during many years, the large capitalization and the money values involved, and the widely ramified relations in the trade, as any reason for an indirect, temporizing and ineffectual remedy. That Court stated the rule with regard to the remedy to be applied as follows:

> " * * * three dominant influences must guide our action: (1) the duty of giving *complete and efficacious* effect to the prohibitions of the statute; (2) the accomplishing of this result with as little injury as possible to the interest of the general public; and (3) a proper regard for the vast interests of private property which may have become vested in many persons as a result of the acquisition either by way of stock ownership or otherwise of interests in the stock or securities of the combination without any guilty knowledge or intent in any way to become actors or participants in the wrongs which we find to have inspired and dominated the combination from the beginning" (221 U. S. 185). (Italics ours.)

The Court then proceeded to enter a decree requiring divestiture of stock and assets of the many companies involved.

The minimum application of the rule in the *American Tobacco* case also would require a pro rata distribution by Columbia Oil of its Panhandle Eastern stock.

The Du Pont Case.

The Plan is inconsistent with *United States v. E. I. Du Pont de Nemours & Co., et al.*, 188 Fed. 127. In that case the defendants attempted to restrain and monopolize the powder trade

> "by vesting, in a few corporations, the title to the assets of all the corporations affiliated with the trade association, then dissolving the corporations whose assets had been so acquired, and binding the few corporations owning the operating plants in one holding company, which should be able to prescribe policies and control the business of all the subsidiaries without the uncertainties attendant upon a combination in the nature of a trade association" (p. 152).

This Court, mindful of the rule stated by the Supreme Court in the *Standard Oil* and *Tobacco* cases that it should apply such relief as should "effectually dissolve" the combination, entered a decree requiring the dissolution of seven corporations and the distribution of their assets, and the organization of two corporations and the transfer of many properties to each, together with many injunctive provisions. The decree also required that during a period of five years none of the corporations should have common officers or directors, and should acquire no stock in another of said corporations.

Defendants cite this case and *United States v. American Tobacco Co.*, 191 Fed. 371, as authority for the five-year veto privilege on directors to be enjoyed by the Department of Justice. But the cases are fundamentally different. The decrees in the *Du Pont* and *Tobacco* cases effected a dissolution of the basic combination. With that substantive relief granted, the danger from common directors after the lapse of five years was greatly reduced. But under this Plan there is no dissolution of the basic, principal combination. There is no severance of the direct and indirect bonds which tie Panhandle to the Columbia interests analogous to the separation of the companies in the *Tobacco* and *Du Pont* cases. If there were, there would be no occasion for the five-year veto

privilege. The veto privilege can be no substitute for the complete and efficacious substantive relief prescribed by this Court in the *Du Pont* case. Minimum application of the rule in the *Du Pont* case would require a complete severance of Panhandle from the Columbia interests.

The Union Pacific Cases.

The plan is inconsistent with *United States v. Union Pacific R. R. Co.*, 226 U. S. 470. The Union Pacific Company acquired 46 per cent. of the stock of the Southern Pacific Company, thus uniting in a single control two great competitive railroads. The stock was held for the Union Pacific Company by an intervening company (The Oregon Short Line Railroad Company) which it also controlled, by the same method by which Columbia Gas caused Columbia Oil to hold the Panhandle stock. The par value of the acquired Southern Pacific stock was $126,650,000. That company operated a line of railroad extending from New Orleans to Los Angeles, San Francisco and Portland, with branch lines and connections extending into tributary territory.

The Court held that the dominion and control given to the Union Pacific by its acquisition of stock brought the transaction within the condemnation of the antitrust laws. A decree was accordingly entered which prohibited the defendants, including the intermediate company (Oregon Short Line Railroad), whose position was analogous to that of Columbia Oil in this case, from voting the stock, from paying or receiving dividends, and exercising any control whatsoever over the corporate acts of the Southern Pacific Company.

The defendants proposed to comply with the decree by transferring the Southern Pacific shares to the sharehold-

ers of the Union Pacific Company in proportion to their holdings, thus establishing a common ultimate interest of stockholders similar to that existing between the stockholders of Columbia Gas and Columbia Oil Companies. It was contended that such distribution was authorized by the decrees in the *Northern Securities* and *Standard Oil* cases. The transfer was opposed by the then Attorney General, George W. Wickersham, for the following reasons, stated in a memorandum filed with the Court:

> "The Union Pacific interests in effect ask the aid of the court to protect them from loss resulting from the enforced disposition of the Southern Pacific stock unlawfully acquired and held by them. The court will, of course, so mold its decree as not to effect unnecessary injury; but the primary consideration is the public interest, not that of the Union Pacific stockholders. It is to the interest of the public that the Southern Pacific stock now held by the Union Pacific be so widely distributed that the combination is not only terminated but the probability of continued control by the holding of large amounts of stock of the two companies in the same hands be reduced to a minimum.
>
> While the court should avoid, except as a dernier resort, the forced sale of the stock at auction (on the grounds stated in 197 U. S. at page 229) the District Court should be left free to require such disposition of the stock as will best accomplish the ends of the decree without being hampered by the theory of vested rights of the Union Pacific stockholders in the stock to be disposed of, * * *.
>
> The effect of a mere pro rata distribution of the stock among the Union Pacific stockholders is wholly problematical. The stock list affords but little clew to the real ownership. It is well known, however, which an inspection of the stock list confirms, that large amounts of stock stand on the books in the names of banking and brokerage houses. It is true the stock is distributed among

some 22,000 holders, but Mrs. E. H. Harriman, Kuhn, Loeb & Co., and the directors of the Union Pacific R. R. Co. (including the Chicago, North Western Rwy. Co., represented on the board of directors by Mr. Marvin Hughitt) together hold $41,251,000 of its stock; 164 bankers and brokers, each holding 1,000 shares or over, hold $132,787,800. Indeed 363 holders together hold stock amounting to $196,259,800 or 62.05 per cent of the whole.

It is only the remaining $119,916,500 of stock that is distributed among nearly 22,000 holders.

The Southern Pacific stock, aside from that now held by the Oregon Short Line R. R. Co., in the hands of the public amounts to $146,040,630. This amount is distributed among upwards of 15,000 stockholders."

In declining to approve a distribution among the Union Pacific shareholders, the Court said:

"The plan proposed in the present motion of distributing the stock among the shareholders of the Union Pacific Company or of selling it to such shareholders will in effect transfer the stock from the Oregon Short Line Company, which now holds it for the Union Pacific Company, to the stockholders of the latter company, who own and control that company. Upon the face of it, this would seem to be a proposition to perpetuate the domination and control of the Union Pacific Company over the Southern Pacific Company, because of the power given to the Union Pacific Company's stockholders to choose the directors of the Southern Pacific Company. The ultimate determination of the affairs of a corporation rests with its stockholders and arises from their power to choose the governing board of directors * * * " (p. 475).

"It is contended for the appellees, however, that, in view of the great number of widely scattered stockholders of the Union Pacific Company, there

is no probability of their acting together to continue the control of the Union Pacific Company over the Southern Pacific Company. Indeed, this is said to be impossible. But we are unable to accede to this contention. Bearing in mind *the object of the statute to end such combinations* and the *duty of the courts in dealing with them to make such decrees as will most thoroughly effectuate that purpose*, it is not consistent with that end to order such distribution of the stock as *may* fail to discontinue the control denounced, and as in all probability will fail to efficiently enforce the statute. It is by no means improbable, but quite likely, that, if the stock was transferred to the stockholders of the Union Pacific Company by distribution among them, the large stockholders could, by purchases and transfers of the stock, get into their own hands the power of choosing directors of both companies, and thus, though in a different manner, the Southern Pacific Company would continue to be in the practical control of the Union Pacific Company, which has been found to be a rival and competing company within the meaning of the law" (pp. 475-476).

"The main purpose of the Act is to forbid combinations and conspiracies in undue restraint of trade or tending to monopolize it, and the object of proceedings of this character is to decree, *by as effectual means as a Court may, the end of such unlawful combinations and conspiracies.* So far as is consistent with this purpose, a Court of Equity dealing with such combinations should conserve the property interests involved, *but never in such wise as to sacrifice the object and purpose of the statute.* The decree of the Courts must be faithfully executed and *no form of dissolution be permitted that in substance or effect amounts to restoring the combination which it was the purpose of the decree to terminate*" (pp. 476-477). (Italics added.)

The present Plan is a flagrant challenge to the rule of law as applied in the *Union Pacific* and in other cases cited herein. Defendants assert that the Plan meets the requirements of the *Union Pacific* case, because in that case the control by the Union Pacific of the Southern Pacific emanated from the power of the stockholders to choose the directors of the Southern Pacific, and that the Plan in this case eliminates the power of the Columbia interests to choose the directors of the Panhandle Company. Two fundamental differences exist. First, in the *Union Pacific* case a divestiture by the intermediate company (The Oregon Short Line Railroad Co.) was required, while in this case the intermediate company, Columbia Oil, is permitted to continue in possession of the stock. Second, in the *Union Pacific* case, while divestiture was required, not even pro rata distribution was permitted because it would result in too great a community of interest among stockholders of Union Pacific and Southern Pacific, while in this case the Plan does not require distribution and permits the community of interest to continue.

The minimum application of the rule in the *Union Pacific* case does not even permit a pro rata distribution by the Columbia Oil & Gasoline Corporation to its stockholders of the Panhandle Eastern Stock but would require an outright sale.

The Lake Shore Case.

The Plan is inconsistent with *United States v. Lake Shore & Michigan Southern Ry. Co.*, 203 Fed. 295. In that case a group of bituminous coal carrying railroads had procured the control of coal companies and com-

petitive railroads by acquisition of stocks and other securities. The transactions were held to be in violation of the anti-trust laws. The decree required an absolute sale of the stocks. Voting the stock, direction of management and payment of dividends were also prohibited. Pro rata distribution to the stockholders of the principal companies was not permitted. Instead it was provided that the stock should be sold "free from every interest * * * of the railway companies * * * and of the stockholders of each of them."

In the Lake Shore decree, for the first time, appears a provision for the appointment of a person to act for the Court to make a sale of stock. It was provided that if a sale by the parties was not made within two months the Court would appoint a master to make such sale or a receiver to take possession of the stock with the power to sell and dispose of the same.

The International Harvester Case.

The Plan is inconsistent with *United States v. International Harvester Co.*, 214 Fed. 987. In that case the Harvester Company acquired the stock and assets of many corporations manufacturing harvesting machinery. The combination represented a total capitalization of $120,000,000, and made 85 per cent of all the harvesting machinery sold in the United States.

The Court held the combination violative of the anti-trust laws and ordered its dissolution, saying:

> "It will therefore be ordered that the entire combination and monopoly be dissolved, that the defendants have 90 days in which to report to the court a plan for the dissolution of the entire un-

> lawful business into at least three substantially equal, *separate, distinct, and independent corporations, with wholly separate owners and stockholders,* or in the event this case is appealed and this decree superseded, then within 90 days from the filing of the procedando or mandate from the Supreme Court the defendants shall file such plan, and in case the defendants fail to file such plan within the time limit the court will entertain an application for the appointment of a receiver for all the properties of the corporate defendants, * * *" (p. 1001). (Italics added.)

The Reading Case.

The Plan is inconsistent with *United States v. Reading Co.*, 226 Fed. 229; 253 U. S. 26. In that case the defendants were held to have restrained and monopolized trade in anthracite coal by the union of two producing companies through a holding company. As in the preceding cases, the Court ordered a divestiture of stock, with prohibitions as to voting, payment and receipt of dividends and influencing management. The Court refused to permit a pro rata distribution of stock which would result in a community of stockholders. In denying the request the Court said:

> "The principal matter in dispute is whether the individual stockholders of the Central Railroad Company (distinguishing them from the Reading Company and the other corporation defendants) should be permitted to acquire the stock, bonds, and other securities of the Coal Company, and on this point, also, we agree with the Government. In our opinion the doctrine of the *Union Pacific* case, 226 U. S. 470, calls upon us to deny the individual stockholders that privilege" (p. 285).

This ruling was affirmed by the Supreme Court in 253 U. S. 26, with directions for the entry of a decree dissolving the combination by

> "the disposition of the shares of stock and bonds and other property of the various companies, held by the Reading Company, as may be necessary to establish the entire independence from that company and from each other * * *, and also that such disposition shall be made by the decree of the stocks and bonds of the Lehigh and Wilkes-Barre Coal Company, as may be necessary to establish entire independence between these two companies to the end that the affairs of all of these now combined companies may be conducted in harmony with law" (p. 64).

THE LEHIGH VALLEY RAILROAD CASE.

The Plan is inconsistent with *United States v. Lehigh Valley Railroad Co.*, 225 Fed. 399; 254 U. S. 255. That case dealt with a combination of anthracite coal carrying and producing companies, created, amongst other means, by acquisition of stock control of coal producing companies. The Supreme Court ordered that the District Court should enter a decree—

> "dissolving the combination effected through the intercorporate relations subsisting between the Lehigh Valley Railroad Company, the Lehigh Valley Coal Company, Coxe Brothers & Company, Inc., The Delaware, Susquehanna & Schuykill Railroad Company and the Lehigh Valley Coal Sales Company, with such provisions for the disposition of all shares of stock, bonds, or other evidences of indebtedness, and of all property of any character, of any one of said companies owned or in any manner controlled by any other of them as may be necessary to establish their entire independence

> of and from each other. The contract of March 1, 1912, between the Coal Company and the Sales Company must be decreed to be void and all contract relations between the two companies enjoined which would serve in any manner to render the Sales Company not entirely free to extend its business by buying and selling coal where and from and to whom it chooses with entire freedom and independence, so that it may in effect, as well as in form, become an independent dealer in coal, and free to act in competition, if it desires, with the defendant Coal Company or Railroad Company" (pp. 270-71):

The minimum application of the rule in the *Lake Shore* case, the *International Harvester* case, the *Reading* case and the *Lehigh Valley* case would require divestiture by Columbia Oil of its Panhandle Eastern stock, but would not permit pro rata distribution among Columbia Oil stockholders.

Southern Pacific Case.

The Plan is inconsistent with *United States v. Southern Pacific Co.*, 239 Fed. 998; 259 U. S. 214. In that case the Southern Pacific Company acquired all the stock of the Central Pacific, a competitive road. The importance and magnitude of the interests involved, both public and private, and the difficulty of separation, are indicated by the following description:

> "The Central Pacific with its eastern connection at Ogden forms one great system of transportation between the east and the west, and the Southern Pacific with its roads and connections, and steamboat lines, forms another great transcontinental system for transportation from coast to coast. The Central Pacific constitutes some 800

> miles of the transcontinental line of which it is a part. The Southern Pacific system has practically its own line of railroads and steamboat connections to New York via Galveston and New Orleans" (p. 229).

The provisions of the decree directed by the Court were to be as follows:

> "We direct that a decree be entered severing the control by the Southern Pacific of the Central Pacific by stock ownership or by lease. But, in accomplishing this purpose, so far as is compatible therewith, the mortgage lien asserted in the brief filed for the Central Union Trust Company shall be protected" (p. 241).

Proceedings before the Interstate Commerce Commission concluded this *Southern Pacific* case.

Consent Decree Cases.

The Plan is inconsistent with the consent decrees entered in other corporate combination cases. In the *New Haven* case, the *New England Fish Exchange* case, the *Swift* case, the *Cement Securities* case, the *Ward Food Products* case, the *National Food Products* case, the *Rand Kardex* case, the *Fox Theatres* case, the *Foster & Kleiser* case, and the *Radio Corporation* case, the decrees required a divestiture by outright sale of stock and assets. No ratable distribution of stock or assets to ultimate stockholders was permitted, except in the *Radio Corporation* case, and only partially in that case. The *Radio* decree is the only instance for twenty-eight years in which ratable distribution has been permitted, the last previous instance being the *Du Pont* case in 1912.

In the *Radio Corporation* decree, entered by this Court in May, 1930, the General Electric and Westinghouse companies were permitted to distribute one-half of their holdings among their own stockholders, probably because a large loss might ensue if all the holdings had to be sold at once, but required the defendants to dispose of the remaining half.

In none of these Consent Decree cases did the Court permit the continued holding of the illegally acquired securities.

THE CLAYTON ACT.

The Plan is inconsistent with the provisions of the Clayton Act. The decree entered in this case on January 29, 1936, adjudges that the petition states a cause of action under the Clayton Act. It states:

> "* * * that the petition states a cause of action under the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and *the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."* (Italics added.)

That Act gives the Trade Commission concurrent jurisdiction with the courts for the enforcement of compliance with Section 7, which prohibits such acquisitions of stock as that between Columbia Oil and the Panhandle Company; and specifically provides that the remedy shall be divestiture, namely, that the Commission shall enter an order requiring the defendant to "divest" itself of the stock. The provision stated in full is as follows:

> If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person *an order requiring such person* to cease and desist from such violations, and *divest itself of the stock held* or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order (Section 11).

Section 8 of the Clayton Act, referred to in the above excerpt, prohibits interlocking directors.

The Clayton Act thus consititutes a declaration by the Congress that divestiture by the defendant, that is, ridding himself of the stock, is not only the most efficacious remedy but the only permissible one under the law. The remedy prescribed by the statute is one as to which the Trade Commission has no discretion. The failure of Congress to also specifically prescribe that remedy in cases brought in the courts was no doubt because that remedy had already become established as the appropriate and effective remedy in cases theretofore decided by the courts and heretofore shown in this brief.

In *Federal Trade Commission v. Western Meat Co.*, 272 U. S. 554, the Western Meat Company acquired the stock of the Nevada Packing Company, and the Trade Commission entered an order under Section 7 of the Clayton Act requiring the Western Meat Company to "divest itself absolutely of all capital stock of the Nevada Packing Company." The defendants sought to circumvent the statute by using the stock to acquire the assets of the Nevada

Packing Company and thus oust the jurisdiction of the Commission. The Supreme Court upheld the Commission's order, saying:

> The Commission's duty was to prevent the continuance of this unlawful action by an order directing that it cease and desist therefrom and divest itself of what it had no right to hold. Further violations of the Act through continued ownership could be effectively prevented only by requiring the owner wholly to divest itself of the stock and thus render possible once more free play of the competition which had been wrongfully suppressed. The purpose which the lawmakers entertained might be wholly defeated if the stock could be further used for securing the competitor's property (p. 559).

POINT II.

The identity of stockholders of Columbia Oil and Columbia Gas constitutes a community of interest which renders the proposed plan ineffective.

Much has been made of the fact that both Columbia Oil and Columbia Gas are corporations whose stock is widely distributed among the public; that they are in effect publicly-owned corporations. This is a myth that deserves to be exploded. As we have pointed out, 1% of the stockholders own 57½ per cent. of the common stock of Columbia Gas, while 1.3 per cent of Columbia Oil stockholders own 33.2 per cent of that company.

The Special Master has found (Finding VII), that the Columbia Oil stock was originally distributed by Columbia Gas in 1930 as a dividend to its common stockholders; at present Columbia Gas stockholders own 68 per cent. of the stock of Columbia Oil.

The Master further finds that no evidence has been presented as to how much more Columbia Oil stock is owned by preferred stockholders or by bondholders of Columbia Gas other than common stock; nor as to how much Columbia Oil stock could be controlled or influenced by such persons (Findings VIII).

The most reliable evidence as to the identity or lack of identity of Columbia Gas and Columbia Oil stockholders is peculiarly within the possession of the defendants. A showing of wide distribution would have been in their favor. The fact that they have made no disclosure of that evidence, strongly argues that the identity is as complete if not more complete than as stated. This is borne out by the Special Master when he says:

> "* * * no attempt was made to show the holdings of persons, such as close relatives, not living in the same house, friends or business associates, not included in this narrow classification but who might be expected to follow the wishes, advice or example of the persons whose stock holdings were disclosed. I do not imply that it would have been possible to submit data showing such holdings *but, the burden being on the proponents of the plan, I am willing to assume that such persons, who might vote their stock in favor of Columbia Gas rather than Columbia Oil where there was a convict of interest, do not hold a substantial amount.*" (Italics added.)
>
> "There is not included in the tabulation above the stock held in the 'Street' names of Coggeshall and Hicks, Gude, Winmill & Co., Jessup and Lamont, or W. E. Hutton & Co., except the stock actually owned by J. F. Hutton, though the holdings of these brokers appeared in Columbia Oil Exhibit 2 and Missouri-Kansas argues that on account of the close connection between these firms and Colum-

> bia Gas, it would be reasonable to assume that much of the stock in these names might be voted in the interests of Columbia Gas, which may be true. If such an assumption were accepted, 113,517 shares would be added to the holdings listed above making a total of 329,392 shares, excluding Mr. Gessler's."

As we have pointed out, a striking parallel as to identity of stockholders exists between this case and the *Union Pacific* case. In the *Union Pacific* case the problem was to dispose of 46% of the stock of the Southern Pacific Company which the court had decided could not be held for the benefit of the Union Pacific Railroad because of the condition of potential and natural competition between Union Pacific and Southern Pacific. The court specifically refused to permit the 46 per cent. holding in Southern Pacific to be distributed as a dividend to Union Pacific shareholders, saying:

> "In considering these questions we must bear in mind not only the number of stockholders but the character of the distribution of the stock among them. In the brief and exhibits the appellees filed with this Motion it is shown that of the 22,150 stockholders of the Union Pacific Company, 68, owning five thousand or more shares each, hold together $139,782,700 of the stock, and 300 others, owning from one to five thousand shares each, hold together $59,020,700 of the stock, and that the two groups, comprising 368 stockholders, hold $198,803,400, or 62.8 per cent of the stock."

So finding, the court refused to permit the Southern Pacific stock to be distributed among Union Pacific stockholders because the identity of ownership resulting from such distribution would be so great that it would not be a compliance with the anti-trust laws.

It must be noted that the proposal which the court refused was to permit the 368 largest stockholders of Union Pacific to hold 28.9 per cent of the stock of the Southern Pacific. (This 28.9 per cent is reached by multiplying 46 per cent by 68 per cent.) These figures are startlingly close to the figures shown by the defendants' exhibits introduced as evidence before the Master in this case (Columbia Gas & Electric Corporation Exhibit 9). That shows that 370 Columbia Gas stockholders own 33.2 per cent of the stock of Columbia Oil. Two of these stockholders, Gossler and the United Corporation, propose to partially sterilize the voting power of their stock; we use the word "partially" because if the voting power of that stock was ever needed, there is nothing to prevent Gossler and United Corporation from transferring it to friendly hands. These two stockholders own 7.2 per cent of the stock of Columbia Oil. If these two holdings be deducted, we have 368 stockholders, precisely the same number discussed in the *Union Pacific* case, but in the present case these 368 own 26 per cent. of all of the stock of Columbia Oil, or 28 per cent. of all the stock that can vote after 7.2 per cent. has been sterilized.

In order to approve this Plan it would, therefore, be necessary to overrule not only the principle, but even the actual mathematics of the *Union Pacific* case. It will, of course, do much greater violence to the principle of the *Union Pacific* case to permit the continued existence of the illegally acquired stock of Panhandle Eastern as a single block in the hands of a corporation subject to the control of Columbia Gas stockholders owning almost exactly the same percentage expressly held to be offensive in the *Union Pacific* case.

The vice of the present Plan goes even further:

The record shows, and the Master finds, that the average attendance of stockholders at annual meetings of Columbia Oil & Gasoline range from 46 to 50 per cent. of the total shares outstanding; and the vote that would be cast by the 368 stockholders above-mentioned could carry with it really a vote of 52 per cent (or of almost 66 per cent. if the Gossler and United Corp. stock be added) of the vote which experience has shown is cast at the average meeting of Columbia Oil.

It must be further noted that the 370 stockholders above-mentioned are included among the 580 largest stockholders of Columbia Gas (1% of the total number of stockholders of that company) who own a total of 57½ per cent. of Columbia Gas Company.

POINT III.

The Plan attempts the use of a corporate fiction to circumvent the law.

The cases above discussed show that the Supreme Court has never deviated from the principle that it is the duty of the Court to follow that method of dissolution which is the most efficacious practicable method. Throughout the 50 years of anti-trust law enforcement there has been no departure from this rule. Without exception the method of dissolution always required by the Supreme Court has been the simple one of transfer of the stock illegally acquired away from the corporation by which it was acquired.

In several cases courts have hesitated to order an immediate outright sale of stock illegally acquired and held,

and have permitted a ratable distribution to shareholders. This has been done only when it affirmatively appears that a complex situation exists and that unnecessary hardship would result from outright sale. No such showing has been made before the Special Master in this case, and not even an assertion of hardship incident to the outright sale of the Panhandle Eastern stock has been made on the record, or could be supported.

The proposed Plan fails to meet the requirements of the law because (1) The present Plan obviously does not disturb the ownership by Columbia Oil of the illegally acquired Panhandle Eastern stock, and (2) the Report of the Special Master discloses that the outright sale of Columbia Oil stock in Panhandle Eastern would be a completely and certainly effective method of dissolution of the illegal combination, as opposed to the uncertainties of the present Plan. For no other reason than the arbitrary choice of the defendants it is proposed to discard the certainly effective method in favor of an untried, uncertain and inefficacious one.

While the defendants characterize the Plan as one providing for divestiture and therefore argue that it meets the requirements of the law, the truth is that it has not one single attribute of divestiture within the meaning of the law. Of what are the defendants to be divested under the Plan?

As to Columbia Gas: It divests itself of 400,000 shares of preferred stock of Columbia Oil, by transferring it to Columbia Oil.

As to Columbia Oil: It divests itself of the stocks and obligations of five subsidiary companies, by transferring them to Columbia Gas.

As to the individual defendants: None except the defendant Gossler divests himself of anything he now owns or holds. Gossler is required to sell all stock owned by him in Columbia Oil; but he has five years within which to do so.

These transactions are not divestitures within the meaning of the law or by analogy with any of the previous cases. They are mere intercombination transfers. When it is realized that they are mere transfers of title from one agent of the combination to another, it is plain that these defendants seek to apply a new and special meaning to the word "divestiture" not warranted by any existing precedent. A decree which approves such transactions will not really interfere with the combination. It will constitute, as said by Thurman W. Arnold in his book *Folklore of Capitalism*, a useless "ritual," deflecting the attack upon this combination into "purely ceremonial channels." An empty ceremony because the corporate fiction is used to circumvent the law.

Chief Justice White held in the *American Tobacco Co.* case, 221 U. S. 106, that there was no possibility of circumventing the policy of the anti-trust laws by such a "disguise or subterfuge of form." In *United States v. Northern Securities Co.*, 120 Fed. 721, the defendants attempted to save the combination by reliance upon the corporate fiction. Relative to the argument that they "might create a purely fictitious person termed a corporation" to consolidate the two railroad companies, and thus safely circumvent the law, the court said:

> "The manifest unreasonableness of such a proposition, and the grave consequences sure to follow from its approval, compel us to assume that it must be unsound, especially when we reflect the law, as

> administered by courts of equity, looks always at the substance of things—at the object accomplished, whether it be lawful or unlawful—rather than upon the particular devices or means by which it has been accomplished" (p. 726).

If the proposed Plan shall be permitted Columbia Gas, Columbia Oil and Panhandle will be consolidated and controlled by three kinds of proprietary relationship, namely, (1) by the same body of ultimate stockholders, (2) by ownership in Columbia Gas of a minimum of $11,000,000 to a maximum of $23,000,000 of Columbia Oil debentures, and (3) by ownership in Columbia Oil of stock control of Panhandle. In the cases heretofore discussed in this brief such methods of consolidation and control have been without exception condemned and dissolved.

Turning to the Plan, we find the following provisions relative to choosing directors:

> "All officers and directors of Columbia Oil shall resign upon the entry of the order and the approval of the Plan by the Securities and Exchange Commission (to the extent required by law), and be replaced by officers and directors *not objectionable to the Department of Justice,* such directors to own no stock or securities of Columbia Gas. Such directors shall not include anyone who is now, or ever has been, an officer, director or employee of Columbia Gas or any of its subsidiary companies.
>
> * * * * *
>
> The representatives of Columbia Oil on the Board of Directors of Panhandle Eastern shall be directors of Columbia Oil."

Under this provision directors of Columbia Oil and of Panhandle will be chosen in the first instance by the stock-

holders of Columbia Oil. The power to select directors is reduced, if it is reduced at all, in only one respect, namely, that the Department of Justice, by objecting to one or more selections, may prevent their assumption of office. The veto privilege as to directors of Columbia Oil to be granted to the Department of Justice, that is, that the directors shall be "not objectionable to the Department of Justice," obviously is not an adequate substitute for a comprehensive, basic, traditional and certain remedy.

The *Union Pacific* case did not leave the power to choose directors thus undisturbed in the Union Pacific Company, and transfer a veto privilege to the Department of Justice, or to any other agency, no matter how sacrosanct. Instead, in that case the Court wiped out the power to elect directors *in toto* and in perpetuity; and that is the only valid, safe and practicable course. For if the Plan in this respect is valid, we would need a Department for the Appointment of Corporation Directors enjoying the privilege of appointing literally hundreds of persons to lucrative sinecures at the expense of the corporations. We would need a Department for the Administration of Unlawful Monopolies and Restraints of Trade, in which the courts might permanently intern the property and business and affairs of the citizens.

Such consequences serve to show that not only is this Plan a dangerous departure from our established laws, but is offensive to our basic institutions, and that it is repugnant to the fundamental attributes of equitable jurisdiction, in that it transfers the power of the Court to control those engaged in administering its decrees to an agency over which, as a coordinate and independent branch of the Government, the Court can exercise no authority whatever.

It is no answer to say that such incongruity and danger is illusory, because this will be the only instance. Can this Court, any more than another court, prevent the use of its adjudications as authoritative precedents in subsequent cases. This Court can not in this case begin and end the instances of such a privilege in the Department of Justice. It is no answer to say that this case will be the only instance because what is decreed depends upon the volition of the defendants, and the privilege may only be given where the defendants consent. This is merely to say, what is indeed true, that the proposed decree is the voluntary, uncompellable act of the defendants and not the independent judicial act of this Court.

This privilege would be a highly useful one to any public officer; and it would be hard to imagine a consideration which would operate more powerfully to win acquiescence in a palliative remedy of which the privilege is a part. It has the semblance of an exchange of patronage for immunity; and there is a dangerous probability that some day, if not now, it will be used for such a purpose. That is enough to discredit it and cause its rejection by the Court.

POINT IV.

Plan Should Be Disapproved.

The Plan as proposed should be disapproved because:

(1) It permits the retention of the illegally acquired stock in a single block by the same corporation which illegally acquired it contrary to every precedent;

(2) Although it is conceded that there must be complete separation either between Panhandle Eastern and

Columbia Oil or between Columbia Oil and Columbia Gas, the Plan leaves the relationship between Panhandle Eastern and Columbia Oil undisturbed and fails to separate Columbia Oil from Columbia Gas by leaving a community of interest among stockholders of those Companies of precisely the same proportion as was specifically condemned by the Supreme Court in the *Union Pacific* case plus such added community of interest as may exist because of ownership of Columbia Gas preferred stock and bonds by Columbia Oil stockholders, the extent of which is undisclosed, and plus such community of interest as will exist because of ownership by Columbia Gas of Columbia Oil bonds amounting to from $11,000,000 to $23,000,000;

(3) The device proposed by the Plan to neutralize Columbia Gas control over Columbia Oil by giving the Department of Justice veto power over election of Columbia Oil Directors, is unprecedented, uncertain as to corporate legality, uncertain as to permanently binding effect of stockholders' consent, uncertain as to meaning and operation and grossly improper in setting up bureaucratic power over private corporate affairs.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 269

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

STATEMENT AS TO JURISDICTION.

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PANHANDLE EASTERN PIPE LINE COMPANY'S JURISDICTIONAL STATEMENT.

(Filed June 14, 1940.)

Now comes Panhandle Eastern Pipe Line Company, petitioner in the above-entitled cause, appellant, and, for its jurisdictional statement in support of its Petition for Appeal filed herewith, shows as follows:

(a) The decree was rendered in a suit in equity brought under the anti-trust laws by the United States. The decree

of the District Court appealed from denied Panhandle Eastern Pipe Line Company leave to file its application (intervene) and to become a party to the cause for the purpose of enforcing certain rights.

The statute under which the jurisdiction of the Supreme Court is invoked is 15 U. S. C. A. § 29; Feb. 11, 1903, c. 544, § 2, 32 Stat. 823; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167, which is known as the "Expediting Act" and which reads:

> "SEC. 29. *Appeals to Supreme Court.* In every suit in equity brought in any district court of the United States, under any of the laws mentioned in the preceding section,* wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof. (Feb. 11, 1903, c. 544, § 2, 32 Stat. 823; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167.)"

(b) The following cases are believed to sustain jurisdiction:

Missouri-Kansas Pipe Line Company, Petitioner, v. *Columbia Gas & Electric Corporation, et al.,* 110 F. (2d) 15, Cert. den. — U. S. —, 84 L. Ed. 739 (Advance Sheets #13) Causes #748 and #749;

United States v. *California Co-operative Canneries,* 279 U. S. 553, 73 L. Ed. 838.

The case of *Missouri-Kansas Pipe Line Company, supra,* has resolved the identical question here presented, in that the petitioner therein, Missouri-Kansas Pipe Line Company, at two earlier periods sought leave to intervene in this identical cause. At such times the District Court denied the applications to intervene as it subsequently denied the in-

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* The preceding section, namely, Section 28, deals with equitable anti-trust suits in which the United States is complainant under the Anti-Trust Laws.

stant application, which denial is the subject matter of the instant appeal. Appeals were taken from the earlier denials to the Circuit Court of Appeals. The Circuit Court of Appeals for the Third Circuit in the case above referred to and reported as aforesaid at 110 F. (2d) 15, held that the denials of the applications to intervene could not become the subject of an appeal to the Circuit Court of Appeals because under the provisions of the so-called "Expediting Act" that court had no jurisdiction to entertain such appeals, and that the only jurisdiction was in the Supreme Court of the United States. As we now have an appeal from an identical order such as that which the circuit court held is reviewable only by the Supreme Court of the United States, and as said decision of the circuit court was not reviewed upon the application of Missouri-Kansas Pipe Line Company for writs of certiorari, we submit that the decision of the circuit court resolves the question of jurisdiction here presented.

(c) * There is appended hereto a copy of an opinion delivered on March 29, 1939, in this cause on the first occasion when Missouri-Kansas Pipe Line Company sought to intervene in the cause. No opinion was delivered on the second and third occasions when Missouri-Kansas Pipe Line Company sought to intervene. There is also appended hereto a copy of an opinion delivered on April 6, 1940, in this cause on the occasion when Panhandle Eastern Pipe Line Company sought to intervene in the cause. The opinion of April 6, 1940, appended hereto states the grounds upon which the Court acted in denying the instant application.

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* These opinions are printed as exhibits to the jurisdictional statement in the companion case of Missouri-Kansas Pipe Line Company v. U. S. et al., No. 268, October Term, 1940, and are not reprinted as exhibits to this jurisdictional statement.

(d) The date of the decree sought to be reviewed is April 23, 1940. The date upon which the petition for appeal was presented is June 14, 1940.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM 1940

No. 269

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, CHARLES A. MUNROE, THOMAS R. WEYMOUTH, THOMAS B. GREGORY, EDWARD REYNOLDS, JR., BURT R. BAY and JOHN H. HILLMAN, JR.,
Appellees.

BRIEF OF APPELLEE COLUMBIA GAS & ELECTRIC CORPORATION

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IN THE

Supreme Court of the United States

OCTOBER TERM 1940

PANHANDLE EASTERN PIPE LINE COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, CHARLES A. MUNROE, THOMAS R. WEYMOUTH, THOMAS B. GREGORY, EDWARD REYNOLDS, JR., BURT R. BAY and JOHN H. HILLMAN, JR.,

Appellees.

No. 269

BRIEF OF APPELLEE COLUMBIA GAS & ELECTRIC CORPORATION

NATURE OF THE PROCEEDING

This is an appeal from an order (R. 565) entered by the United States District Court for the District of Delaware on April 23, 1940, granting motions by appellees Columbia Gas & Electric Corporation (hereinafter referred to as Columbia Gas) and Columbia Oil & Gasoline Corporation (hereinafter referred to as Columbia Oil) to dismiss appellant's application to intervene in a civil anti-trust suit brought by the United States against appellees Columbia Gas, Columbia Oil and others. The motions to dismiss the application (R. 426, 514) were made upon the sole grounds

that the application was not properly authorized by the appellant, Panhandle Eastern Pipe Line Company (hereinafter referred to as Panhandle Eastern), and that the attorneys who filed the application were not authorized by Panhandle Eastern to represent it.

The District Court granted the motions upon these grounds. Its opinion (R. 520) is reported in 32 Fed. Supp. 474.

Jurisdiction of this Court is invoked by appellant under the Expediting Act of 1903 (Act Feb. 11, 1903, c. 544, 32 Stat. 823, as am.; 15 U. S. C. §§ 28 and 29).

QUESTIONS PRESENTED

The questions presented on this appeal are:

(1) whether the application to intervene in the anti-trust suit was properly authorized by Panhandle Eastern; and

(2) whether the attorneys, whose names appear on the application as attorneys for Panhandle Eastern, were authorized by that Company to act in its behalf in filing the application.

STATEMENT OF THE CASE*

This cause, in which the application to intervene was filed, was a civil anti-trust suit brought by the United States

*This statement of facts is limited to those portions of the Record necessary for the consideration of the narrow questions presented by this appeal. A more detailed statement of certain aspects of the government anti-trust suit, not here essential, is contained in the Statement of the Case in our brief on the appeal of Missouri-Kansas Pipe Line Company from the order of the same District Court denying it the right to intervene; Case No. 268 this term. The Record in that case and this has been consolidated and printed in the same volume.

in the District Court for the District of Delaware against Columbia Gas, Columbia Oil and various individuals, alleging violation of the anti-trust laws by the defendants in connection with the acquisition and ownership by Columbia Oil of a controlling interest in the securities of Panhandle Eastern. The Government's bill of complaint appears in the Record at pages 10-109. No trial was had of the allegations, which were denied by defendants in their answers (R. 109-138), because a Consent Decree (R. 142-149) was entered on January 29, 1936, in which all parties stipulated that the defendants maintained the truth of their answers and did not admit any wrongdoing, but were willing to enter into the Consent Decree to avoid the expense and disturbance of litigation (R. 138-142). One of the provisions of the Decree was that Columbia Oil might retain its stock in Panhandle Eastern (R. 145), but that this stock should be placed in the hands of a Trustee named in the Decree (R. 146), with power to vote the stock for purposes not inconsistent with the Decree and to elect as directors nominees recommended by Columbia Oil, of which the Trustee should be one, but with the power to remove such directors and to replace them with others of his own choosing if in his judgment such action should be necessary in the interests of Panhandle Eastern or to effectuate the purposes of the Decree (R. 146-147). Columbia Oil has been, since the entry of the Decree, the owner of sufficient shares of Panhandle Eastern to be thus permitted to recommend to the Trustee for election six out of nine directors of Panhandle Eastern (R. 378). The Trustee named in the Decree, Mr. Gano Dunn, has continued in office since his appointment from the date of the Decree down to the present date and has voted the stock pursuant to the directions of the

Decree; extracts from his semi-annual reports filed with the Court in pursuance of the Decree are part of the Record (R. 149-274). The Decree also provided that Panhandle Eastern, upon proper application, might become a party to the proceeding for the limited purpose of invoking certain relief to protect it against infractions of the anti-trust laws (R. 149).

Since January, 1939, various further proceedings have been had in the anti-trust suit, not relevant to the questions presented upon this appeal, and there have been three separate attempts by Missouri-Kansas Pipe Line Company (hereinafter referred to as Mokan), a large minority stockholder of Panhandle Eastern, dated respectively, February 6, 1939 (R. 283), July 5, 1939 (R. 362) and April 16, 1940 (R. 526), to intervene in the proceeding, all of which have been denied by the District Court (R. 321, 371 and 541). Appeals from the first two of these attempts to intervene were taken to the Circuit Court of Appeals for the Third Circuit but were dismissed by that Court for lack of jurisdiction in view of the Expediting Act (15 U. S. C. §§ 28, 29); its opinion is reported in *Missouri-Kansas Pipe Line Company* v. *United States et al.*, 108 F. (2d) 614. Certiorari thereupon was denied by this Court: *Missouri-Kansas Pipe Line Company* v. *United States et al.*, 309 U. S. 687. An appeal from the denial by the District Court of the third and most recent petition of Mokan to intervene dated April 16, 1940, is now pending at this term in this Court in Case No. 268.

The present proceeding represents another effort on the part of Mokan to become a party to the anti-trust proceeding. The allegations of the present application and the relief asked therein are identical in every substantial respect

with the allegations of and relief asked in Mokan's application to intervene dated April 16, 1940, which it filed as a stockholder of Panhandle Eastern, in behalf of Panhandle Eastern (R. 526), and from the order dismissing which (R. 541-542) an appeal is pending in this Court as Case No. 268, this term.

This time, however, the attorneys who represented Mokan in its latest attempt to intervene assert that they are now representing Panhandle Eastern, and that that corporation is seeking in its own right to intervene in the anti-trust case. The present application, filed on March 23, 1940 (R. 412) was signed with the name of Panhandle Eastern "by Arthur G. Logan" (R. 424), and also by two other attorneys, all of whom represent Mokan in its most recent application to intervene (R. 540). No director or officer of Panhandle Eastern signed the application, and Mr. Creveling, President of Panhandle Eastern, in his affidavit (R. 427) filed with appellees' motions to dismiss, repudiated as unauthorized the action of these attorneys in filing the application in the name of Panhandle Eastern. The basis alleged for the authority of these attorneys to so represent Panhandle Eastern is action which they assert was taken at the meeting of the stockholders of Panhandle Eastern held on March 11, 1940. It will thereupon be necessary to review briefly the proceedings which took place at the meeting.

After a few preliminaries Mr. Logan, the owner of 10 shares of common stock (which were being voted by proxy) (R. 448), and who is one of the attorneys prosecuting this appeal, moved that Mr. Dixon, a proxy for Mokan, be made chairman of the meeting. The Chairman of the meeting, Mr. Creveling, President of Panhandle Eastern, ruled the motion out of order (R. 432) upon the ground that the

by-laws provide that the President of the corporation shall preside at meetings of stockholders (R. 433) and that the by-laws may be amended only if notice of the proposed amendment be contained in the notice of the meeting (R. 434). Mr. Logan thereupon took an appeal from the ruling to the floor for a vote by shares (R. 432) and asserted that Mr. Gano Dunn, the Trustee appointed under the Consent Decree to hold and vote the shares of Panhandle Eastern owned by Columbia Oil, could not vote these shares unless he should exhibit specific instruction from Columbia Oil as to how he should vote on the motion (R. 432). Mr. Dunn voted to support the chair (R. 434). Mr. Logan's appeal to disqualify Mr. Dunn's vote was disallowed by the chair (R. 435) and the Chairman, after some difficulty (R. 435-436), proceeded with the meeting.

The specific ground upon which Mr. Dunn's vote was challenged was that under Article III of the Consent Decree, in sub-paragraph (b) thereof (R. 147), it is provided that Mr. Dunn shall vote the Panhandle Eastern stock, owned by Columbia Oil, of which he is Trustee, upon all matters and questions, other than election of directors, on which the stock is entitled to vote

> "as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree"

and that therefore Mr. Dunn was not entitled to vote upon any question unless he should exhibit specific instructions from Columbia Oil, the beneficial owner, directing him how to vote upon that question (R. 432-3). At one point a general motion was made by Mr. Logan that the corporation refuse to accept any vote of Mr. Dunn on any question un-

less Mr. Dunn should first state that he had been directed by Columbia Oil to vote as he did (R. 446), which motion was ruled out of order (R. 446).

The same procedure continued throughout the meeting, the representatives of Mokan presenting numerous motions or objecting to various other motions and claiming as to each one that Mr. Dunn was not entitled to vote thereon unless specifically instructed as to his vote by Columbia Oil and the chair in each case overruling the claim so made and receiving Mr. Dunn's vote. Thus there was unsuccessfully challenged Mr. Dunn's vote on a resolution appointing two persons to act as judges of the election (R. 436); and approving the minutes of the previous annual meeting (R. 443); and on resolutions by the Mokan representatives that the by-laws be amended to increase the Board of Directors from nine to fourteen persons (R. 451); and to refuse to recognize the right of the B Preferred Stock to vote for directors (R. 453-4); and that the by-laws be amended to provide that the officers should be chosen and their salaries fixed by the stockholders (R. 459); and that there be elected as officers of Panhandle Eastern certain officers of Mokan (R. 460).

Directors were elected for the ensuing year (R. 457-9), the Mokan representatives insisting that the additional directors, provided for in their resolution to amend the by-laws by increasing the number of directors to fourteen, had been elected (R. 458) and objecting to the election of two directors by the Class B Preferred Stock held by Mr. Dunn as Trustee (R. 458).

Thereafter Mr. Hand, a proxy holder for Mokan, moved that Panhandle Eastern should bring various lawsuits, including suits against Columbia Oil (R. 461). One

of the suits urged was intervention in the present anti-trust suit (R. 423), and it is pursuant to this resolution that the attorneys claim to bring the application which is involved in this appeal. The resolution provided for the employment by Panhandle Eastern of the specified attorneys, who now prosecute this appeal, to represent it in this proposed litigation, and provided that these attorneys should be paid "a reasonable compensation". The resolution did not name Mr. Dunn as one of the defendants against whom relief should be asked in the proceeding for intervention. The statement of appellant's brief (page 26 thereof) that the resolution to authorize this intervention "proposed an action against Gano Dunn, as trustee" is not correct and cannot be supported by the Record; the action contemplated by the proposed intervention application was described by its proponents to the stockholders' meeting only as an action against Columbia Oil (R. 462). This resolution was defeated by the majority vote cast by Mr. Dunn (R. 462-3) and the same objection as above was made to Mr. Dunn's vote (R. 462), and also the additional objection that, as the resolution called for lawsuits against Columbia Oil, if Mr. Dunn were voting pursuant to Columbia Oil's instructions, then his vote should not be received, and if he were not so voting, then he was not entitled to vote (R. 462).

A motion to adjourn was finally made and carried (R. 480). Mr. Logan, however, and his supporters, refused to recognize the validity of such adjournment (R. 481) and proceeded to hold a stockholders' meeting of their own after the representatives of the majority stockholders had left the room (R. 481-7). At this meeting of minority stockholders, all the resolutions which they had introduced at

the regular meeting were proposed and adopted by those present (R. 481-7). In addition, the meeting purported to elect five additional directors of the Corporation, pursuant to the above-described resolution which had been introduced to increase the membership of the Board of Directors from nine to fourteen and which had been voted down at the regular meeting (R. 483, 484). The result of this proceeding if successful would be to give the Mokan minority stockholding a majority of the membership of the Board of Directors.

Thereafter, on March 23, 1940, the present application (R. 412) was filed by the attorneys who had been so named in the resolution of employment which had been voted down by the majority stock, said application being filed in the name of Panhandle Eastern, asking leave to intervene in the Government anti-trust suit. On March 29, 1940, appellees Columbia Gas (R. 426) and Columbia Oil (R. 514) filed motions to dismiss the application upon the grounds that it was not signed or verified by Panhandle Eastern and that the attorneys whose names appeared on it were not attorneys for Panhandle Eastern nor authorized by Panhandle Eastern to act in its behalf. From the affidavits and exhibits attached to these motions it appeared that the notice of the stockholders' meeting contained no mention of any of the matters with respect to enlarging the board of directors, or having officers elected by stockholders, or intervening in lawsuits and bringing other suits, such as were presented at the meeting by the attorneys now purporting to represent Panhandle Eastern (R. 500); that prior to the meeting the Columbia Oil Board of Directors had (R. 503-509) approved instructions given to Mr. Dunn by Mr. Wilson, Vice-President of Columbia Oil,

directing Mr. Dunn how to vote upon a certain specific matter immaterial to the issues in this proceeding and directing further

> "* * * that as to all other matters except directors, which might come before said meeting he [Mr. Wilson] had directed Mr. Dunn to vote said shares as, in his discretion, seemed best for the interest of Panhandle and generally to support the management; * * *."

and that following the Panhandle Eastern stockholders' meeting, at a meeting of the Board of Directors of Columbia Oil, a resolution was adopted approving and ratifying all of the votes of Mr. Dunn at that stockholders' meeting (R. 510).

On April 23, 1940, the District Court entered its order (R. 565), having previously filed its opinion (R. 520), granting the motions to dismiss the intervention application on the grounds (R. 525-526) (a) that the application was not authorized by Panhandle Eastern, (b) that the attorneys whose names appear on the application were not authorized by Panhandle Eastern to act in its behalf; and (c) that Mr. Dunn duly voted the Panhandle Eastern stock held by him, as Trustee, on all matters on which he voted at the Panhandle Eastern meeting, in accordance with the provisions of the Consent Decree and pursuant to valid directions from Columbia Oil.

Following this stockholders' meeting of Panhandle Eastern the Mokan attorneys in addition brought a proceeding pursuant to Section 31 of the Delaware Corporation Law (printed as Appendix C to this brief), signed by Mr. Logan as attorney for Mokan, in Mokan's name in the Chancery Court of the State of Dela-

ware to review the election of directors and officers of Panhandle Eastern at the above-described stockholders' meeting and determine who were the duly elected directors and officers (R. 510). This chancery proceeding was filed on March 13, 1940 (R. 510), prior to the filing of the instant application in the name of Panhandle, and named as parties Panhandle Eastern and certain of its directors and officers whose election was contested. Although nothing further appears in the record with respect to this proceeding,* the Chancellor on June 19, 1940, entered his order in that proceeding overruling all the contentions of Mokan, and holding that the directors elected by the vote of Mr. Dunn had been properly elected; that the officers of the Corporation were those persons chosen by the directors; that none of the additional directors purported to have been elected by Mokan pursuant to their claimed amendment of the by-laws had been properly elected; that none of the persons purported to have been elected officers by Mokan at the stockholders' meeting had been elected officers; and that the purported amendment of the by-laws with respect to the number and election of directors and officers was void and the by-laws had not been modified in any respect. This decree

*While the ordinary rule is that an appellate Federal court will not take judicial notice of the records of proceedings in other courts, nevertheless there is an exception to this rule in the case of developments in proceedings in other courts, including a State Court, having an important bearing upon an appeal pending in the Federal appellate court, and which take place during the pendency of the appeal in the Federal court so that they could not have been made part of the record; *Ransom* v. *Pierre*, 101 Fed. 665 (C. C. A. 8th, 1900); *Hennessy* v. *Tacoma Smelting & Refining Co.*, 129 Fed. 40 (C. C. A. 9th, 1904); *United States* v. *Commercial Credit Co.*, 20 F. (2d) 519 (C. C. A. 4th, 1927); *Mutual Life Insurance Co. of New York* v. *Lipp*, 28 F. (2d) 863 (C. C. A. 9th, 1928).

of the Chancellor is printed in full in Appendix A of this brief. In lieu of filing an opinion in that proceeding, and prior to the entry of his decree, the Chancellor addressed a letter to the various counsel in the case, dated June 11, 1940, announcing his decision in advance, in order that there might be no unnecessary delay in settling the important question as to who constituted the proper management of Panhandle Eastern. A copy of this letter is printed in full in this brief as Appendix B.

Thus the situation now presented is this: the properly elected directors of Panhandle Eastern have been determined by the Delaware Chancellor in the exercise of the jurisdiction given to him under Section 31 of the Delaware Corporation Law. These directors have never authorized the making by Panhandle of any application to intervene in this anti-trust proceeding, nor have they ever employed the attorneys now prosecuting it for this purpose. Yet, the application which was dismissed in the order here appealed from was signed with the name of Panhandle Eastern by these attorneys. The question presented on this appeal is therefore whether the instant application to intervene could be brought by these attorneys, in the absence of any authority to that end.

SUMMARY OF ARGUMENT

POINT I—The Question of the Authority of the Attorneys in This Proceeding to Represent Panhandle Eastern Was Properly Presented by Motion to Dismiss Their Application Filed on Behalf of Panhandle Eastern; and the District Court Acted Properly in Disposing of the Application Upon This Motion to Dismiss Prior to Any Hearing Upon the Merits.

POINT II—Legal Proceedings by a Corporation Must Be Instituted and Controlled by Its Directors and Cannot Be Begun by Stockholders Against the Will of the Directors, Except by a Stockholders' Derivative Action Alleging Abuse of Their Powers by the Directors. The Present Proceeding Was Filed Without Authority from the Board of Directors of Panhandle Eastern, and, Not Being a Stockholders' Derivative Action, Was Properly Dismissed.

POINT III—Even if the Stockholders Could Authorize the Filing of This Application as an Act of the Corporation, They Did Not Do So, Since the Vote of Dunn in Opposition Thereto Was Valid.

POINT IV—If the Stockholders Now Purporting to Speak for Panhandle Eastern Felt that They Were Unjustly Treated by the Defeat of Their Resolution to Apply for Intervention in This Cause, Their Proper Course Was to File a Derivative Stockholders' Action in Behalf of Panhandle Eastern Asking that it Be Allowed to Intervene, and Not to Attempt to Seize Control of that Corporation and Act in its Name Without Authority from its Board of Directors.

ARGUMENT

POINT I

THE QUESTION OF THE AUTHORITY OF THE ATTORNEYS IN THIS PROCEEDING TO REPRESENT PANHANDLE EASTERN WAS PROPERLY PRESENTED BY MOTION TO DISMISS THEIR APPLICATION FILED ON BEHALF OF PANHANDLE EASTERN; AND THE DISTRICT COURT ACTED PROPERLY IN DISPOSING OF THE APPLICATION UPON THIS MOTION TO DISMISS PRIOR TO ANY HEARING UPON THE MERITS.

The authority of an attorney to bring proceedings on behalf of a client may be challenged at any time during the course of the proceedings, and, where a pleading is filed by such attorney, the question of his authority may properly be raised by motion to dismiss the pleading upon that ground. Such is the holding of *The Pueblo of Santa Rosa* v. *Fall*, 273 U. S. 315 (1927). In that case a bill had been filed on behalf of an Indian Pueblo to enjoin respondents, the Secretary of the Interior and the Commissioner of the General Land Office, from offering for sale certain Indian lands from among the public lands of the United States. In their answer, respondents alleged, among other things, that the Pueblo had never authorized the attorneys to bring the suit, and filed also a motion to dismiss, supported by affidavits (precisely as has been done in the instant case), upon that ground. After a hearing upon the motion, the District Court postponed its decision until the final hearing and proceeded to take testimony both upon the issue of the authorization of the attorneys to bring the suit and upon the other issues raised by the answer going to the merits. The District

Court held that the inhabitants of the Pueblo had not authorized the attorneys to bring the suit, but entered a decree dismissing the bill upon the merits. On appeal the Court of Appeals affirmed the decree on the merits. The United States Supreme Court, upon further appeal, held that both lower courts were in error in dismissing the bill on the merits, and held that the bill should have been dismissed for lack of authority in the attorneys to bring it but without prejudice to the bringing of any other suit with proper authority of the Pueblo. This Court said at pages 319, 321 of its opinion:

> "Whether, as a matter of practice, the challenge to the authority of counsel was seasonably interposed, it is not important to decide, for in any event, the trial court, or this court, has power, at any stage of the case, to require an attorney, one of its officers, to show his authority to appear. In *The King of Spain* v. *Oliver,* 2 Wash. C. C. 429, 430, Mr. Justice Washington, sitting in the circuit court, said: '* * * it would be strange, if a Court whose right and whose duty it is to superintend the conduct of its officers, should not have the power to inquire by what authority an attorney of that Court undertakes to sue or to defend, in the name of another—whether that other is a real or fictitious person—and whether its process is used for the purpose of vexation or fraud, instead of that for which alone it is intended. The only question can be, as to the time and manner of calling for the authority, and as to the remedy, which are in the discretion of the Court, and ought to be adapted to the case.' See also, *W. A. Gage & Co.* v. *Bell,* 124 Fed. 371, 380; *McKiernan et al.* v. *Patrick et al.,* 4 How. (Miss.) 333, 335; *Clark* v. *Willett,* 35 Cal. 534, 539-541; *Miller* v. *Assurance Co.,* 233 Mo. 91, 99; *Munhall* v. *Mitchell,* 178 Mo.

App. 494, 501; *S. F. Savings Union* v. *Long,* 123 Cal. 107, 113.

* * * * * * * *

"We agree with the conclusions of the court of first instance, but are of opinion that the dismissal should have been not upon the merits, but without prejudice to a suit if properly brought. The decrees of both courts, therefore, are erroneous, and the cause must be remanded to the court of first instance with directions to dismiss the bill, on the ground that the suit was brought by counsel without authority, but without prejudice to the bringing of any other suit hereafter by and with the authority of the alleged Pueblo of Santa Rosa."

Thus, the *Pueblo* case not only establishes the propriety of the motion to dismiss for lack of authority to bring the action, made in the instant case by defendants-appellees below, but in addition holds that the time and manner of inquiring into the authority of the attorneys to bring the action are within the discretion of the lower court. The appellants' brief is in error in saying (p. 28 thereof) that the filing of this motion without accompanying denial of the allegations of the complaint as to violations of the anti-trust laws constituted an admission by defendants of such allegations. It no more constituted such an admission than would by itself a motion to dismiss based on insufficiency of service of process or improper venue. Rule 8(d) of the Rules of Civil Procedure upon which the Mokan attorneys rely (their brief p. 28) is inapplicable, because by its terms it applies only to a "responsive pleading". No such pleading has been filed here, the question of the authority of the Mokan attorneys having been raised by prelimi-

nary motion, the propriety of which has been established by this Court in the *Pueblo* case.

The *Pueblo* case has been relied on and followed in two recent decisions of Circuit Courts of Appeals, in both of which certiorari has been denied by this Court. In *McLean v. Burkinshaw,* 107 F. (2d) 665 (Ct. App. D. C. 1939), the Court of Appeals for the District of Columbia affirmed an order striking out an answer upon the ground that the attorney who had filed the answer had no authority to represent the defendant. The Court said at page 665 of its opinion:

> "The District Court may in its discretion, at any stage of a case, require an attorney to show his authority to appear. *Pueblo of Santa Rosa* v. *Fall,* 273 U. S. 315, 47 S. Ct. 361, 71 L. Ed. 658; *Alamo* v. *Del Rosario,* 69 App. D. C. 47, 98 F. 2d 328."

Certiorari was denied by this Court in 309 U. S. 670 (1940).

Similarly, the Circuit Court of Appeals for the Second Circuit in *Sutherland* v. *International Insurance Co.,* 43 F. (2d) 969 (C. C. A. 2nd, 1930), granted a motion by the defendant to dismiss a bill filed by the Alien Property Custodian on the ground that an attorney in private practice had no authority to represent him. The Court expressly relied on the *Pueblo* case. Certiorari was denied by this Court in 282 U. S. 890 (1930).

These authorities sustain the propriety of the method of procedure of the District Court in the instant case. Accordingly, we now pass to a consideration of whether that Court was correct in holding that the attorneys purporting to represent Panhandle Eastern in the application had no authority to represent it.

POINT II

LEGAL PROCEEDINGS BY A CORPORATION MUST BE INSTITUTED AND CONTROLLED BY ITS DIRECTORS AND CANNOT BE BEGUN BY STOCKHOLDERS AGAINST THE WILL OF THE DIRECTORS, EXCEPT BY A STOCKHOLDERS' DERIVATIVE ACTION ALLEGING ABUSE OF THEIR POWERS BY THE DIRECTORS. THE PRESENT PROCEEDING WAS FILED WITHOUT AUTHORITY FROM THE BOARD OF DIRECTORS OF PANHANDLE EASTERN, AND, NOT BEING A STOCKHOLDERS' DERIVATIVE ACTION, WAS PROPERLY DISMISSED.

It is well settled that the directors of a corporation are the only persons who can institute an action on behalf of and in the name of the corporation. This is because the decision whether or not to institute litigation is one that has been confided in the first instance to their discretion in managing the corporation.

Stockholders, of course, are not remediless, because if, after a request by a stockholder to the directors that they institute an action, the directors improperly refuse to do so, the stockholder may, upon proper showing, bring a derivative action in his own name for the benefit of the corporation. Indeed, in the controversy represented by the instant case, Mokan has brought two such derivative actions on behalf of Panhandle Eastern, seeking leave in the right of Panhandle Eastern to intervene in this Government antitrust action. The first was its intervention application of February 6, 1939 (R. 283), which was denied by the District Court (R. 321). The next was its petition of April 16, 1940 (R. 526), which was also denied by the District Court (R. 541), and an appeal from which denial is at present

before this Court concurrently with this appeal, in case No. 268.

The above rule, that the determination as to whether to bring litigation in the name of a corporation is confided to its directors, has been repeatedly stated by text writers. Thus in 5 Fletcher, Private Corporations (Perm. Ed.) § 2104 at page 361, it is said:

> "The control of litigation and the decision to litigate or not is in the directors, and until they improperly fail or refuse to sue or defend in the corporate name, the stockholder cannot do so, and then must sue in right of the corporation in equity, making a case of wrongful refusal by the directors to sue."

And in Spellman, Corporate Directors, § 145 at page 394, it is said:

> "The board of directors has the power to institute, prosecute, and defend suits brought by or against the corporation. The wisdom and expediency of bringing suit, or refusing to sue, is a matter for the determination of the board; and, unless fraud on the part of its members is proved, its decision will not be interfered with and no one else may sue in the corporate name."

And in 4 Cook, Corporations (8th ed. 1923), §750 at pages 3297-99, it is said:

> "It frequently happens that the corporation has a cause of action against a third party which the directors think best not to press, or that the corporation is sued and the directors think best not to defend, or, where an action is pending, the directors decide to compromise the matter. The judgment of the

> directors may, in the opinion of a stockholder, be erroneous, and yet it cannot be controlled or changed by the stockholders except by refusing to re-elect the directors to office. The stockholder cannot go into court and attempt to change the policy of the directors in the management of the suit. A stockholder cannot control the discretion of directors as to whether to bring a suit or not."

The decided cases fully support the above statements of the text writers.

Thus, in *Railway Co.* v. *Alling*, 99 U. S. 463 (1878), the directors of one corporation brought an action against another corporation. After an unfavorable decision in the trial court, an appeal was taken by the plaintiff to this Court. During the pendency of the appeal, certain persons who did not want the litigation to proceed acquired the majority of the stock of the appellant corporation. The board of directors, however, was desirous of continuing the litigation and pressing the appeal. The new majority stockholders moved the Court to dismiss the appeal for the reason that the stockholders of the corporation no longer wished to prosecute it. This Court, however, denied the motions and heard the appeal on its merits, stating at page 472 of the opinion:

> "The present appeals are being prosecuted to final judgment by order of the directors or trustees of the appellant corporation. To them, by law, is committed the management of the property and concerns of the corporation. In all litigation involving the action of the corporation they are its representatives in court. In the discharge of their duties they represent not only the stockholders, but the bondholders and creditors, of the company.

> Their right, while in the exercise of their legitimate functions, to manage the affairs and suits of the company, ought not to be controlled or interfered with by this court, by reason of any thing which appears upon the pending motions. Upon their responsibility as directors and trustees they insist that these causes shall proceed to final judgment, in accordance with the stipulation heretofore made by the parties to the appeals. If, in prosecuting them to final judgment, they violate any trust committed to their hands, or any agreement which is binding upon the corporation and the minority stockholders, remedy may be sought in some court of original jurisdiction, into which, upon proper pleadings, all persons interested may be summoned."

And this Court in *Corbus* v. *Gold Mining Co.*, 187 U. S. 455 (1903) in affirming the dismissal of a stockholder's suit to restrain his corporation from paying a certain tax said (p. 463):

> "The directors represent all the stockholders and are presumed to act honestly and according to their best judgment for the interests of all. Their judgment as to any matter lawfully confided to their discretion may not lightly be challenged by any stockholder or at his instance submitted for review to a court of equity. The directors may sometimes properly waive a legal right vested in the corporation in the belief that its best interests will be promoted by not insisting on such right. They may regard the expense of enforcing the right or the furtherance of the general business of the corporation in determining whether to waive or insist upon the right. And a court of equity may not be called upon at the appeal of any single stockholder to compel the directors or the corporation to enforce every right

> which it may possess, irrespective of other considerations. It is not a trifling thing for a stockholder to attempt to coerce the directors of a corporation to an act which their judgment does not approve, or to substitute his judgment for theirs."

The principle of the above cases has been recently followed in *Watts* v. *Vanderbilt,* 45 F. (2d) 968 (C. C. A. 2d, 1930), where, in a stockholder's derivative suit on behalf of a corporation, the bill alleging that there was no board of directors because the corporation had been dissolved, the Court said at page 969:

> "If the allegations that the board of directors has not functioned for the past five years and that there is no existing board of directors be sufficient to excuse a demand upon the directors, it would but emphasize the necessity of demanding action on the part of the shareholders. Under the New Jersey statutes (2 Comp. St. N. J. 1910, title 'Corporations,' p. 1629, § 46) three shareholders may call a meeting in the manner there provided. If there is no board of directors, as the bill alleges, an appeal to the shareholders to elect directors or other officers to conduct the litigation was a condition precedent to the plaintiffs' right to represent the corporation."

There is nothing in the law in Delaware, under the laws of which Panhandle Eastern is incorporated, which differs from the principles above set forth. Thus in *Sohland* v. *Baker,* 15 Del. Ch. 431 (1927), 141 Atl. 277, the Supreme Court of Delaware made it clear that for the purposes of bringing an action the directors were to be considered as the corporation, the Court saying (141 Atl. at p. 282), in sustaining a stockholder's derivative action to enforce a

right of the corporation against a third person whom the directors had refused to sue:

> "While the conclusion may be drawn that the corporate management was not hostile to action by the complainant, the fact, nevertheless, remains that the corporation itself refused to litigate an apparent corporate right.
>
> "The reasons for such refusal need not be considered. The corporation, having refused to institute proceedings, the only way that its rights could be brought before the court was by a bill filed by a stockholder. That the complainant, for the prevention of injustice, therefore, had the right to file the bill in the court below, seems clear."

The rule has also been stated by the Delaware Chancery Court in *McKee* v. *Rogers,* 18 Del. Ch. 81 (1931), 156 Atl. 191, where the Court said, with reference to a stockholder's derivative action to collect on a judgment previously obtained in favor of the corporation in another state against the defendant (156 Atl. at p. 193):

> "Of course a stockholder cannot be permitted as a general rule to invade the discretionary field committed to the judgment of the directors and sue in the corporation's behalf when the managing body refuses. This rule is a well settled one. But equally well settled is the exception to it, that a stockholder may sue in equity in his derivative right to assert a cause of action in behalf of the corporation, without prior demand upon the directors to sue, when it is apparent that a demand would be futile, that the officers are under an influence that sterilizes discretion and could not be proper persons to conduct the litigation."

And in *Ainscow* v. *Sanitary Co. of America,* 180 Atl. 614 (Del. Ch. 1935) a suit brought by a stockholder in the name of the corporation was dismissed because the stockholder showed neither authorization from the board of directors to bring the suit nor a demand upon the directors and their refusal. It is therefore clear that, under Delaware law, a stockholder cannot usurp the powers of the board of directors and institute litigation in the corporation's name, without authorization of the board. If he wishes to institute litigation against the will of the directors, it must be by a stockholder's derivative action making the usual allegations of demand upon the directors and their refusal.

It is also well settled in Delaware that, where a stockholder desires to bring a derivative action on behalf of the corporation to recover on an alleged cause of action owned by the corporation, an improper refusal by the directors to sue is sufficient to justify a derivative suit by the stockholder without further appeal to the stockholders; the courts of that State have so held in the *Sohland* and in the *McKee* cases just cited, as appears from the quotations from the opinions therein above given, and also in *Fleer* v. *Frank H. Fleer Corp.,* 14 Del. Ch. 277 (1924), 125 Atl. 411; *Miller* v. *Loft, Inc.,* 17 Del. Ch. 301 (1931), 153 Atl. 861.

Accordingly, it is clear that the present application in the name of Panhandle Eastern was filed without the authority of that corporation, because the filing was not authorized by its Board of Directors. To the proof offered by defendants (R. 427) that the filing of the intervention application had never been authorized by the Board of Directors, the attorneys purporting to represent appellant make no statement in contradiction and offer no proof of any such authority. Instead, their appeal purports to find

its authority to file the application, as stated in paragraph XX thereof, in a resolution allegedly adopted at a meeting of the stockholders of Panhandle Eastern (R. 423). But, under the authorities above cited, even if a majority of the stockholders as a body had voted in favor of the resolution, instead of only a minority as did vote, they could not have authorized the bringing of this application for leave to intervene, for the determination whether or not to bring this proceeding was within the discretion of the directors as the managing body of the corporation. It would be even more clear that the choice of certain named attorneys to conduct the litigation, and the payment of compensation to them, both of which were sought to be authorized by the stockholders' resolution relied on, are peculiarly matters within the discretion of the directors. The exercise of the directors' discretion in all these matters could only be challenged in the proper fashion by a stockholder bringing a derivative action on behalf of the Panhandle Eastern and alleging facts to show that the discretion of the directors in refusing to institute the litigation was improperly exercised. The present is not a proceeding of that nature.

POINT III

EVEN IF THE STOCKHOLDERS COULD AUTHORIZE THE FILING OF THIS APPLICATION AS AN ACT OF THE CORPORATION, THEY DID NOT DO SO, SINCE THE VOTE OF DUNN IN OPPOSITION THERETO WAS VALID.

Irrespective of the lack of power of the stockholders of Panhandle Eastern to authorize the filing of an intervention application as an act of their corporation, the fact is

that a majority of all stock validly cast its vote against the resolution that the corporation should intervene in this proceeding. The vote of Mr. Gano Dunn, the holder of record of more than a majority of the stock of Panhandle Eastern, in opposition to the resolution was validly cast.

Mr. Dunn's rights in voting the Panhandle stock held by him were governed by the provisions of the Consent Decree, Section III(b) of which empowered him to vote the stock, upon all questions other than the election of directors,

> "* * * as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree;" (R. 147).

The directions of the beneficial owner (Columbia Oil) were that on all matters, except a certain specific matter not here relevant and except the election of directors concerning which specific instructions were given him, Mr. Dunn should vote as, in his discretion, seemed best for the interests of Panhandle Eastern and, generally, to support the management (R. 503-9).

It is clear that all of the votes cast by Mr. Dunn at the stockholders' meeting on March 11, 1940, including the vote not to make the instant intervention application, were validly cast in compliance with this direction of Columbia Oil. The objection reiterated at the stockholders' meeting by the appellants against the reception of Mr. Dunn's vote was that he could not show specific authority from Columbia Oil to vote as he did. But there is nothing in the provisions of the Consent Decree which requires that the directions of the beneficial owner be specific with respect to the Trustee's vote on every matter coming up at a stock-

holders' meeting. It cannot be supposed that the Decree intended that Mr. Dunn's vote could not be counted on such a mechanical question as a motion to elect two persons as judges of election, in the absence of specific directions with respect thereto; nor can it be supposed that Mr. Dunn should not be permitted to cast his vote, in his discretion, against proposed amendments to the By-laws, of which no advance notice had been given to the stockholders. Similarly, specific instructions could not be required from the beneficial owner as to how Mr. Dunn should vote with respect to such resolutions concerning the institution of litigation as might be presented at the meeting, as to the nature of which the stockholders had no previous notice. Accordingly, as was the only feasible procedure, the beneficial owner, Columbia Oil, instructed Mr. Dunn that, on all matters except two which it specified, he should vote the shares held by him as Trustee as, in his discretion, seemed best for the interest of Panhandle Eastern and generally to support the management (R. 503). Pursuant to this general authority, Mr. Dunn voted against proceeding with the instant intervention application (R. 462). Subsequently, the Board of Directors of Columbia Oil ratified all the votes cast by Mr. Dunn at the meeting (R. 509-10).

The contention that Mr. Dunn was not entitled, under the Consent Decree, to vote as he did, because he did not have specific instructions from Columbia Oil, was presented to the Court below, wherein the Consent Decree was entered and which, pursuant thereto, had retained jurisdiction for the purpose of giving it full effect, and enforcing strict compliance with it. The Court construed the Decree contrary to such contentions, and in its opinion, handed down April 6, 1940, held (R. 525):

> "In construing the language of the consent decree, I find that the votes cast by Gano Dunn were authorized by the powers conferred upon him by the consent decree and that his votes were well within the directions given to him by Columbia Oil. From this finding, it follows that the so-called application filed in this proceeding was not authorized by Panhandle Eastern or by any responsible body having control of said corporation."

The enforcement of decrees in equity is, by well settled principles, a matter ordinarily falling within the sound discretion of the Court which entered the decree.

The same contention was presented, by attorneys here purporting to represent the appellant, to the Chancellor of the Delaware State Chancery Court in connection with the proceeding brought subsequent to the annual meeting by Mckan pursuant to Section 31 of the Delaware Corporation Law (printed as Appendix C to this brief) for the purpose of reviewing the action of the meeting and determining what directors had been properly elected; and the same decision was reached by the State Chancery Court as had been previously reached by the Federal District Court. The Chancellor held that the action of the Mokan group purporting to amend the By-laws of Panhandle Eastern and enlarge the Board of Directors was void and without effect and that the nominees of Mokan as directors to fill the vacancies so created had not been elected directors (see decree of the Chancellor set out in Appendix A to this brief). The Chancellor, in his letter to counsel of June 11, 1940 (Appendix B), said:

> "Nor am I impressed by the contention that, even if Mr. Dunn's votes be considered as stock votes, they

> were void because he did not have the express directions of his principal with regard to certain matters that came before the meeting."

The principle of the Chancellor's ruling applies as much to the vote of Mr. Dunn opposing the resolution to intervene in this proceeding as to the resolution amending the By-laws in connection with which Mr. Dunn's vote was assailed on the ground that he did not have specific instructions and where the Chancellor sustained Mr. Dunn's vote as valid.

The soundness of the conclusion reached by these two courts, the Federal District Court below and the Delaware State Chancery Court, is apparent from a study of the language of the Consent Decree. Mr. Dunn's voting powers as set forth in that Decree are not limited to a mechanical compliance with detailed instructions from the beneficial owner, Columbia Oil; instead, Mr. Dunn, as Trustee, is permitted, in fact required, by the Decree "to vote said stock upon all other questions and matters" (*i. e.*, other than the election of directors) "on which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree" (R. 147). The grant of authority to him is in the broadest sense. The instructions given by Columbia Oil to Mr. Dunn in advance of the meeting (R. 503-9) were consonant with these broad provisions of the Decree; as pointed out by the District Court below (R. 523):

> "* * * Gano Dunn attended the annual meeting of March 11 girded with his own authority as Trustee, supplemented by all the directions from Columbia Oil that could have been anticipated in the normal course of human events."

In voting against the resolution providing for intervention in this action Mr. Dunn's vote was in no way "inconsistent with the purposes of this [Consent] Decree." The resolution demanded that the corporation institute a number of lawsuits, intervention in this proceeding being one of them, and then went on to name the attorneys to be employed for the purpose, being the attorneys for Mokan, and to provide further for the payment to these attorneys of "a reasonable compensation" (R. 461). Mr. Dunn was entitled to vote against the resolution if he believed, as he did, that this litigation would do no more than waste the corporate assets; for a previous application which had been filed in February, 1939, by Mokan asserting a derivative right as a stockholder on behalf of Panhandle Eastern, had been denied by the District Court on March 30, 1939 (R. 321), the Court in its opinion filed therewith (R. 314) assigning as one of the grounds for the denial that the application was not timely (R. 317-18). And the relief asked (R. 423-424) in the intervention application which has now been filed by these attorneys claiming to represent Panhandle Eastern, is comprised in the relief asked (R. 310) in the unsuccessful previous application by Mokan. Mr. Dunn, in voting the stock against proceeding with this new petition to intervene, was refusing to repeat, still a year later, the futile and costly procedure of renewing a claim which the Court had previously decided was unfounded. For this reason alone, and without regard to any other considerations, Mr. Dunn was justified in voting against the resolution.

The Mokan attorneys in their brief (pp. 29-31 thereof) attempt to pose a dilemma whereby Mr. Dunn could not vote at all upon the resolution introduced by Mokan, out of which this appeal arises. They assert that Mr. Dunn had

to vote, if at all, pursuant to instructions from Columbia Oil, and that since the resolution sought to compel Panhandle Eastern to bring intervention proceedings to assert claims against Columbia Oil, therefore such instructions by Columbia Oil were invalid. But the argument disregards the broad authority conferred upon Mr. Dunn as Trustee by the Consent Decree, as described in the preceding paragraph. He is empowered by the Decree (R. 146) "to exercise all the rights and privileges incidental to the absolute ownership" of the stock, and this includes the right to vote it. He is obliged to vote it as the beneficial owner, Columbia Oil, may direct, only in case such directions are not "inconsistent with the purposes of this decree" (R. 147); if they are inconsistent, he is not deprived of the right to vote, but may, under the general broad grant of authority to him above quoted, vote it as his conscience and judgment dictate. Therefore, if for purposes of argument it be assumed that Columbia Oil, because the intervention application contemplated an action against it, was disqualified from giving Mr. Dunn any directions to vote on the resolution, Mr. Dunn did not lose his right to vote according to his own lights. The reasons adduced in the preceding paragraph for voting against the intervention—lack of timeliness, the conclusiveness of a prior judgment, and the waste of corporate moneys in pursuing a procedure already disapproved by the Court—were ample to justify Mr. Dunn in voting as he did, as a matter of his own individual decision and irrespective of any directions, or lack of them, from Columbia Oil. There was no claim made at the stockholders' meeting that the proposed intervention action, which is the subject of this appeal, would ask relief against Mr. Dunn or challenge his

good faith in the performance of his trust. The statement in appellant's brief (p. 26) that the resolution to authorize this intervention "proposed an action against Gano Dunn, as trustee" is not correct and cannot be supported by the Record; the action contemplated by the proposed intervention application was described by its proponents to the stockholders' meeting only as an action against Columbia Oil (R. 462). In voting the stock of Panhandle Eastern against pursuing against Columbia Oil a second time what had previously been decided to be an unjustified suit, Mr. Dunn was clearly within his rights. His vote against the bringing of the present application to intervene was cast validly and the resolution was therefore validly defeated by the vote of the majority of the stock of Panhandle Eastern.

POINT IV

IF THE STOCKHOLDERS NOW PURPORTING TO SPEAK FOR PANHANDLE EASTERN FELT THAT THEY WERE UNJUSTLY TREATED BY THE DEFEAT OF THEIR RESOLUTION TO APPLY FOR INTERVENTION IN THIS CAUSE, THEIR PROPER COURSE WAS TO FILE A DERIVATIVE STOCKHOLDERS' ACTION IN BEHALF OF PANHANDLE EASTERN ASKING THAT IT BE ALLOWED TO INTERVENE, AND NOT TO ATTEMPT TO SEIZE CONTROL OF THAT CORPORATION AND ACT IN ITS NAME WITHOUT AUTHORITY FROM ITS BOARD OF DIRECTORS.

When a stockholder's rights are claimed to be infringed at a stockholders' meeting, he must seek relief through the orderly process of a court, instead of attempt-

ing to usurp control of corporate action through disorderly self-help.

Such a court process is provided by Section 31 of the Delaware Corporation Law (printed as Appendix C to this brief) for determining who were the directors validly elected at a stockholders' annual meeting. In the present case, the minority stockholders, now purporting to represent the appellant, availed themselves of this procedure after the annual meeting of March 11, 1940, and brought their action on March 13 in the Delaware State Chancery Court to determine who had been the directors duly elected at that meeting and whether the by-law which had been proposed by them increasing the board from 9 to 14 members had been legally adopted (R. 510). The Chancellor decided adversely to all their claims (see Appendices A and B). This finally settled the question as to who were the directors and officers legally elected.

Similarly, an orderly procedure existed for these same stockholders to determine whether the defeat at this stockholders' meeting of the resolution which they had offered in support of their application to intervene was voted down validly so as to preclude them from any further effort to enforce the claimed intervention right. Such a procedure would be a stockholders' derivative action, to be brought, with a due regard for all the requirements of actions of that nature, to be allowed to intervene in the right and on behalf of Panhandle Eastern. There was no need to resort to the disorderly proceeding, presented by the record in the present case, of claiming to have driven through resolutions ordering the Corporation itself to intervene.

CONCLUSION

THE APPEAL SHOULD BE DISMISSED, OR, IF THE COURT CONSIDERS THE APPEAL, THE ORDER OF THE DISTRICT COURT APPEALED FROM SHOULD BE AFFIRMED.

Respectfully submitted,

CLARENCE A. SOUTHERLAND,
DOUGLAS M. MOFFAT,
Attorneys for Appellee Columbia Gas & Electric Corporation.

Delaware Trust Building,
Wilmington, Delaware.

APPENDIX A

IN THE

COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MISSOURI-KANSAS PIPE LINE COMPANY,
Complainant,

vs.

PANHANDLE EASTERN PIPE LINE COMPANY, JOE D. CREVELING, LOUIS F. SPERRY, JOSEPH J. BODELL, DAVID BOYD-SMITH, HUBERT E. HOWARD, GEOFFREY MELLOR and WILLIAM C. TRINGHAM,
Respondents.

FINAL DECREE

AND NOW, TO-WIT, this 19th day of June, A. D. 1940, the above stated cause having come on to be heard before the Chancellor, upon testimony of witnesses and exhibits, and the said cause having been fully argued before the Chancellor,

IT IS ORDERED, ADJUDGED AND DECREED BY THE CHANCELLOR as follows:

(1) That the Bill of Complaint filed in the above-entitled cause shall be and the same is hereby dismissed.

(2) That at the annual meeting of stockholders of Panhandle Eastern Pipe Line Company held on March 11, 1940, each of the following persons was duly elected a director of said corporation, to serve for one year from date of said meeting, or until his successor should be elected and should qualify:

Joe D. Creveling
Joseph A. Bower
William J. Bulkley
A. Faison Dixon
Gano Dunn
William C. Maguire
Walter C. Mortland
Richard C. Paterson
Robert C. Winmill

(3) That none of the following persons, who were nominated for directors of Panhandle Eastern Pipe Line Company at said meeting, were duly or properly elected directors thereat:

Joseph J. Bodell
David Boyd-Smith
Hubert E. Howard
Geoffrey Mellor
William C. Tringham

(4) That at the date of the said annual meeting of stockholders, and on April 25, 1940, the date when the cause was heard, the following persons were the officers of the corporation:

Joe D. Creveling, President
Gerard J. Neuner, Vice-President in Charge of Operations
Robert D. Field, Vice-President
Leith V. Watkins, Secretary and Controller
Louis F. Sperry, Treasurer

(5) That although certain stockholders at said annual meeting of Panhandle Eastern Pipe Line Company purported to elect the following persons as officers of the corporation:

William G. Maguire, President
Gerard J. Neuner, Vice-President
Leith V. Watkins, Secretary
William C. Tringham, Treasurer

none of such persons were duly or properly elected officers by virtue of such action.

(6) That the action of certain stockholders at said annual meeting purporting to amend the by-laws of Panhandle Eastern Pipe Line Company was void and without effect and such by-laws were not modified in any respect whatsoever by any action taken at said meeting.

(7) That costs of the above-entitled cause shall be paid by the Complainant, Missouri-Kansas Pipe Line Company, within 30 days from date hereof, or attachment.

/s/ WM. WATSON HARRINGTON
Chancellor.

APPENDIX B

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

June 11th, 1940.

Hon. Hugh M. Morris,
Hon. Daniel O. Hastings,
Arthur T. Logan, Esq.,
Christopher L. Ward, Jr., Esq.,

Attorneys-at-law,

Wilmington, Delaware.

In re Missouri Kansas Pipe Line Co. vs. Panhandle Eastern Pipe Line Co., et al.,

Application to review an election of directors and officers under Sect. 31 of the Delaware Corporation Law.

Gentlemen:

After a thorough examination of the record of the proceedings of the stockholders' meeting in question, my conclusion is that the fair inference to be drawn therefrom is that the votes taken at that meeting were based on stock ownership, and not on the mere votes of the various persons present, regardless of the number of shares owned by them. It, therefore, necessarily follows that the corporate by-laws were not changed at that meeting and that the Board can only consist of nine members, and not of fourteen as is contended by Mr. Logan.

There may be cases where the facts and circumstances are such as to justify the conclusion that the right to a stock vote has been waived by a failure to expressly demand it on a particular vote; but, as I view it, this is not a case of that nature.

The provisions of the court order, under which title to a large block of stock was vested in Mr. Dunn, have an

important bearing on this conclusion; and this is particularly true as it is difficult to escape the conclusion that all of the provisions of this order were well known to the Mokan group, who claim that they ultimately controlled the meeting. From this aspect of the case, it is unnecessary for me to consider whether the by-laws could have been amended, without notice, or whether the fact that they were originally adopted by the incorporators, who were the only stockholders at that time, is an answer to any such contention.

There is no dispute as to the validity of the election of nine members of the Board, but there is a dispute as to the other five persons who, also, claim to be members of that Board. In view of the possible complications growing out of this contention, a speedy determination of this case is essential to efficient corporate management; and, because my conclusion is largely based on questions of fact, considered in connection with the pertinent statutory, charter and by-law provisions, it seems unnecessary to delay an announcement until I shall have had an opportunity to write an opinion.

Whatever foundation there may be for the charge that Mokan has been unfairly treated in the past by the corporation holding the controlling stock interest in Panhandle Eastern, I do not see how that question can be considered in this controversy. Nor am I impressed by the contention that, even if Mr. Dunn's votes be considered as stock votes, they were void because he did not have the express directions of his principal with regard to certain matters that came before the meeting.

Counsel for the respondents may present such an appropriate order as will carry out these conclusions.

Yours sincerely,

/s/ W. W. HARRINGTON

WWH.B

APPENDIX C

Delaware Corporation Law, Section 31

Sec. 31. *Election of Directors on Failure to Elect on Regular Day; Election Ordered by Chancellor; Contested Elections; Hearing Before Chancellor; Service*:—If the election for directors of any corporation shall not be held on the day designated by the by-laws, the directors shall cause the election to be held as soon thereafter as conveniently may be; no failure to elect directors at the designated time shall work any forfeiture or dissolution of the corporation, but the Chancellor may summarily order an election to be held upon the application of any stockholder, and at any such election the shares of stock represented at said meeting, either in person or by proxy, shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the by-laws of the corporation to the contrary.

Upon the application by any stockholders, the Chancellor shall have power to hear and determine the validity of any election of any director or officer of any corporation organized under this Chapter and the right of any person to hold such office, and in case any such office is claimed by more than one person may determine the person entitled thereto; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation relating to the issue; and in case it should be determined that no valid election of the corporation has been held, the Chancellor shall have power to order an election to be held in accordance with the provisions of the first paragraph of this Section. In any such application service of copies of such petition upon the corporate resident agent of the corporation shall be deemed to be service upon the corporation and upon the person whose title to office is con

tested and upon the person, if any, claiming such office; and it shall be the duty of such resident agent to forward immediately a copy of said petition so delivered to him, or it, to the corporation and to the person whose title to office is contested and to the person, if any, claiming such office, in a post-paid, sealed registered letter addressed to such corporation or such person at his or its last known post-office address; and the Chancellor may make such further or other order respecting notice of such application as he may deem proper under the circumstances.

The Chancellor in any proceeding instituted under this Section shall have power to determine the right and power of persons claiming to own stock, to vote at any meeting of the stockholders authorized by or referred to in this Section.

The Chancellor shall have power to appoint a Master to hold any election provided for in this Section under such orders and powers as he shall deem proper; and he shall also have power to punish any officer or director for contempt, in case of disobedience of any order made by the Chancellor and may, in case of disobedience by any such corporation of any order made by the Chancellor, in his discretion, enter a decree against such corporation for a penalty in a sum not exceeding the sum of Five Thousand dollars ($5,000.00).

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Supreme Court of the United States

OCTOBER TERM, 1940.

No. 269.

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, CHARLES A. MUNROE, THOMAS R. WEYMOUTH, THOMAS B. GREGORY, EDWARD REYNOLDS, JR., BURT R. BAY and JOHN H. HILLMAN, JR.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

BRIEF OF APPELLEE, COLUMBIA OIL & GASOLINE CORPORATION.

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Supreme Court of the United States

OCTOBER TERM, 1940.

No. 269.

PANHANDLE EASTERN PIPE LINE COMPANY,
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THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, CHARLES A. MUNROE, THOMAS R. WEYMOUTH, THOMAS B. GREGORY, EDWARD REYNOLDS, JR., BURT R. BAY, and JOHN H. HILLMAN, JR.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

BRIEF OF APPELLEE, COLUMBIA OIL & GASOLINE CORPORATION.

Decision of the Lower Court.

This brief is submitted by the appellee Columbia Oil & Gasoline Corporation (hereinafter referred to as Columbia Oil) in opposition to the purported appeal of the appellant, Panhandle Eastern Pipe Line Company (hereinafter referred to as Panhandle Eastern), from an order of the District Court of the United States for the District of Delaware, dated April 23, 1940 (R.* 565). That order

* The Transcript of Record on this appeal will be referred to as "R."

granted motions (R. 426, 514-516) made by the appellees Columbia Gas & Electric Corporation (hereinafter referred to as Columbia Gas) and Columbia Oil on March 29, 1940, to dismiss an application (R. 412-424) made on March 23, 1940, in the name of Panhandle Eastern for leave to intervene in the anti-trust suit instituted by the Government in the District Court against the other appellees herein. Prior to the entry of the order, the District Court handed down an opinion which is printed at pages 520-526 of the Record and is reported in 32 Fed. Supp. 474. For the convenience of this Court that opinion is printed at the end of this brief as Appendix A.

The motions to dismiss the application in the court below were made upon the limited grounds (R. 426, 515) that the application was not authorized by Panhandle Eastern and that the attorneys who made the application were not authorized by Panhandle Eastern to act in its behalf in making or prosecuting such application or otherwise. The court granted these motions solely on these limited grounds (R. 520).

This peculiar situation was brought about by the fact that the attorneys who are allegedly acting for Panhandle Eastern in this matter claim that they are acting for Panhandle Eastern under the authority of certain resolutions allegedly adopted at a stockholders' meeting of Panhandle Eastern, held on March 11, 1940 (R. 423, 425). All the preferred stock and a majority of the common stock of Panhandle Eastern, however, were owned by Columbia Oil (R. 150, 448), but due to the provisions of the Consent Decree herein (R. 146), the legal title to all this stock has been vested in Mr. Gano Dunn (R. 150), with the power to elect six out of the nine directors of Panhandle Eastern (R. 523), and to vote on other subjects as directed by Columbia Oil (R. 147). In short, Mr. Dunn had entire control of that stockholders' meeting (R. 428-480).

Despite that fact and despite the adverse votes of Mr. Dunn, said attorneys claim that at the meeting the minority stock interests, namely, Missouri-Kansas Pipe Line Company (hereinafter referred to as Mokan), not only had the right to but did take control of this important corporation, amended its by-laws (R. 451, 460), elected a Board of Directors (R. 458), appointed officers (R. 460), and hired counsel (R. 461-463).

It is evident that a situation of this sort must have caused some concern, not only to Mr. Dunn but to Columbia Oil, the beneficial owner of the majority stock of Panhandle Eastern. Accordingly, when the attorneys for Mokan, claiming to act for Panhandle Eastern, made the application in the name of Panhandle Eastern for leave to intervene in the Government's anti-trust suit pursuant to authority which they claim was conferred upon them at this strange stockholders' meeting, Columbia Oil and Columbia Gas promptly moved in the District Court to dismiss that application (R. 426, 514-516). After a full hearing, that court decided that the actions of the minority interests at the stockholders' meeting of Panhandle Eastern were void and unjustifiable; that Mr. Dunn's votes in opposition to such alleged actions were valid; and that the attorneys claiming to act for Panhandle Eastern had no authority to do so (R. 520-526). In the meantime, the minority interests, in other words Mokan, realizing the weakness of their position instituted a proceeding in the Chancery Court of the State of Delaware in an effort to validate what they hoped they had accomplished at this peculiar stockholders' meeting (R. 510-514).

After a full hearing in that proceeding, the Chancellor of the State of Delaware confirmed the election of nine directors whose election had not been contested, and held that the five additional persons who had been nominated as

directors by the minority interests had not been elected, and that all attempts by the minority interests to amend the by-laws, appoint officers and hire counsel were wholly void and without effect (Appendices B and C).

It should be noted that under the General Corporation Laws of the State of Delaware,* the Chancellor is vested with the exclusive power over such internal corporate controversies. The Chancellor's decree is, therefore, final and conclusive on the invalidity of the attempted actions of the minority interests at the stockholders' meeting, as well as on the lack of authority of these attorneys who claim to represent Panhandle Eastern on the basis of such invalid actions. No appeal has been taken from the Chancellor's decree and, therefore, his decision is final in the matter.

Questions Presented.

The only questions presented on this appeal are

(a) Whether this Court has the jurisdiction to consider this appeal,

(b) Whether the application for leave to intervene in the anti-trust suit in the District Court was authorized by Panhandle Eastern, and

(c) Whether the attorneys who made said application in the name of Panhandle Eastern were authorized by Panhandle Eastern to act on its behalf.

Statement of the Case.

The cause pending in the District Court in which the application to intervene was sought to be filed is a suit, originally instituted by the United States Government on

* Section 31 of the General Corporation Laws of the State of Delaware is printed in full in Appendix D at the end of this brief.

March 6, 1935, by a bill in equity against Columbia Gas, Columbia Oil and several individual defendants (R. 1), in which the defendants were charged with dominating and controlling the affairs of Panhandle Eastern and restraining, monopolizing and attempting to monopolize interstate trade and commerce in natural gas in certain sections of the United States, in alleged violation of the Federal Anti-Trust Laws (R. 10-30). The defendants, including Columbia Gas and Columbia Oil, filed answers denying these charges (R. 109-138).

The case was never tried. On January 29, 1936, a Consent Decree (R. 142-149) was entered upon a stipulation signed by all the parties (R. 138-142), in which the defendants maintained the truth of their answers and consented to the entry of the decree provided that such consent and entry of said decree should not constitute an admission or adjudication that they had violated any laws of the United States (R. 139).

One of the provisions of the Consent Decree permitted Columbia Cil to retain its stockholdings, and acquire additional stockholdings, in Panhandle Eastern (R. 145), but required these stockholdings to be transferred to Mr. Gano Dunn, as Trustee, who was to hold the legal title to said stock and exercise all the rights and privileges incidental to the absolute ownership thereof (R. 146), with broad discretionary voting powers which will be discussed in more detail in Point III hereof.

From shortly after the entry of the Consent Decree up to the present time, Columbia Oil has been the beneficial owner of 100,000 shares of Class A and 10,000 shares of Class B preferred stock of Panhandle Eastern (being all the issued and outstanding shares of these classes), and 404,326 shares of its common stock (being a majority of the issued and outstanding shares of common stock), and

Mr. Dunn has held this stock and voted the same as Trustee pursuant to the terms of the Consent Decree (R. 150, 431, 516). This stock carries the right to elect six of the nine directors of Panhandle Eastern (R. 523).

On January 12, 1939, approximately three years after the entry of the Consent Decree, the Government filed a supplemental complaint in the District Court seeking to supplement the decree by a further order for the purpose of accomplishing what it construed the purposes of the decree to be (R. 274-283). The defendants, including Columbia Oil and Columbia Gas, filed their answers to the supplemental complaint (R. 313-314, 322-332), and this was followed by further proceedings in the anti-trust suit which are not pertinent to the issues involved on this appeal except to the extent hereafter discussed. This Court will find a more detailed statement thereof in the brief of this appellee submitted in appeal No. 268 which is now pending before this Court, the record on which has been consolidated with the record on this appeal.

Mokan is a substantial minority stockholder of Panhandle Eastern claiming ownership to 339,275 shares of its common stock (R. 538). The intervention application involved on this appeal is the third of a series of four intervention applications which have been made by Mokan, or by its attorneys, for leave to intervene in the anti-trust proceedings pending in the District Court (R. 283-312, 362-371, 412-424, 526-540). All these applications have been denied or dismissed by the District Court (R. 321-322, 371, 565, 541-542). Appeals were taken from the orders denying the first two applications to the United States Circuit Court of Appeals for the Third Circuit, and were dismissed by the Circuit Court on December 15, 1939 (R. 6). The Circuit Court's opinion is reported in 108 Fed. (2nd) 614. A petition for a writ of certiorari was denied by this Court

on April 22, 1940 (309 U. S. 687). This appeal No. 269 and appeal No. 268, both of which are now pending in this Court, are the appeals from the two orders dismissing and denying the third and fourth intervention applications, respectively.

In substance, the allegations in the present application (third intervention application) are identical with those contained in the fourth application, and the prayers for relief in both applications are the same. Likewise, the allegations and prayers for relief in the present application are substantially the same as those in the first application which was made on February 6, 1939 (R. 284), except that the prayers in the present application are slightly more limited in scope.

The present application is unverified and is not signed by any officer or director of Panhandle Eastern, but is signed by Arthur G. Logan and two other attorneys (R. 424) who concededly are counsel for Mokan (R. 429, 477, 505-508, 514, 540, 550-551, 555-557). Counsel for Panhandle Eastern are Messrs. E. M. Goodwin and Edwin D. Steele, Jr. (R. 429), neither of whose names, it will be noted, appear on the present application. It is claimed in the application, however, that Mr. Logan and his associates were duly authorized to make that application by virtue of resolutions adopted at the annual meeting of stockholders of Panhandle Eastern held on March 11, 1940, and that Mr. Dunn, the Trustee under the Consent Decree, sought to vote against such resolutions but that his vote was improperly and illegally cast (R. 423, 425).

An examination of the minutes of the annual stockholders' meeting of Panhandle Eastern held on March 11, 1940, which is part of the record on this appeal (R. 428-487), discloses that at the opening thereof, Mr. Greveling, the President, took the chair, called the meeting to order

(R. 428-429) as provided by the by-laws (R. 494), and announced the presence of a quorum (R. 432). Immediately, Mr. Logan, who held 10 shares of stock which were being voted by proxy (R. 448), moved that Mr. A. Faison Dixon, Vice-President of Mokan, be made Chairman of the meeting (R. 432). Mr. Creveling declared the motion out of order in view of the provision of the by-laws that the President shall preside at all meetings of the stockholders (R. 494). Mr. Logan took an appeal from the ruling of the chair, declaring that Mr. Dunn (the majority stockholder) could not vote Columbia Oil's stock without specific instructions as to how he should vote the stock on that particular motion, and that Mr. Dunn could not have any such specific instructions because it could not have been known by Columbia Oil that such a motion would be made (R. 432-433). A vote was taken and Mr. Dunn voted to uphold the chair while Mr. Logan and five of his associates voted to the contrary (R. 434).

After Mr. Logan had again questioned Mr. Dunn's right to vote (R. 434), and vehemently insisted that Mr. Creveling should surrender the chair to Mr. Dixon, Mr. Creveling disallowed Mr. Logan's appeal to disqualify Mr. Dunn's vote, refused to relinquish the chair, and proceeded to the next order of business (R. 435-436). Thereupon, Mr. Logan demanded that whenever Mr. Dunn should vote on any motion he should produce the specific instructions from Columbia Oil showing that he was voting as instructed, and that, in the absence of such showing, Mr. Logan challenged his vote (R. 436). This same procedure continued throughout the meeting. Whenever any motion was made of which Mr. Logan and his associates disapproved and which was carried by Mr. Dunn's vote, Mr. Logan claimed that Mr. Dunn's vote was invalid because of his failure to produce specific instructions from Columbia Oil as to how he should

vote, and likewise whenever Mr. Logan or his associates proposed any motion or resolution which was defeated by Mr. Dunn's opposing vote, Mr. Logan claimed that Mr. Dunn's vote was invalid for the same reason.

The following motions and resolutions, (sometimes in the form of appeals from rulings of the chair refusing to rule as requested), were made or proposed by Mr. Logan or his associates:

(a) Motion to amend the by-laws to increase the Board of Directors from nine to fourteen directors (R. 451-452);

(b) Appeal from the ruling of the chair refusing to declare five additional men, nominated by the representatives of Mokan, elected as directors in addition to the nine directors which were declared elected (R. 457-458);

(c) Appeal from the ruling of the chair refusing to reject the judges' report on the election of two directors elected by the Class B preferred stock (R. 458-459);

(d) Motion to amend the by-laws to provide for officers to be chosen by the stockholders instead of by the directors and to provide that all officers' salaries be fixed by the stockholders instead of by the directors (R. 459-460).

(e) Motion to elect Messrs. Maguire, Neuner, Watkins and Tringham, the first and last named persons being President and Secretary, respectively, of Mokan, to the offices of President, Vice-President, Secretary and Treasurer, respectively, of Panhandle Eastern (R. 460-461);

(f) *Resolutions that Panhandle Eastern bring six suits as requested in a letter from Mokan dated January 15, 1940 (one of which was to make the instant application), employ Mokan's attorneys to undertake*

such proceedings and pay reasonable fees to such attorneys (R. 461-463);

(g) Resolutions that Panhandle Eastern appear and prosecute a certain injunction suit which had already been instituted by Mokan and another, employ Mokan's attorneys to undertake the matter and pay reasonable compensation to such attorneys (R. 463-464); and

(h) Resolution that Panhandle Eastern redeem its class A preferred stock (R. 464-466).

In each instance, Mr. Dunn voted the majority of the voting stock against the motion, resolution or appeal from the ruling of the chair, and Mr. Logan and his associates voted in favor thereof. In each instance the chair ruled that the motion, resolution or appeal, as the case might be, was lost.

The resolutions, noted in italics under subdivision (f) above, are the resolutions on which the attorneys predicate their authority to bring the instant application. Those resolutions were defeated by the vote of Mr. Dunn voting the majority of the voting stock in opposition thereto (R. 462). Mr. Logan again objected to Mr. Dunn's vote on the ground that he should exhibit specific instructions from Columbia Oil instructing him to vote in opposition to those resolutions, and also on the further ground that he could not vote even if he did have such specific instructions, because the action contemplated by such resolutions was against Columbia Oil, and, therefore, he would be disqualified in following any instructions from it on the matter. The chairman accepted Mr. Dunn's vote and declared the resolutions lost (R. 462).

Finally, a motion was made to adjourn. Mr. Dunn voted the majority stock in favor of adjournment and the chair-

man announced that the motion was carried and the meeting adjourned (R. 480). Thereupon, Mr. Creveling, Mr. Dunn and another left the room and Mr. Logan and his associates remained (R. 481). No quorum was present, nevertheless, Mr. Dixon took the chair (R. 481), the motions, which had previously been defeated, were again resubmitted and Mr. Logan and his associates voted in favor thereof (R. 481-487).

The specific provisions of the Consent Decree pursuant to which Mr. Dunn was empowered as Trustee to vote Columbia Oil's stock, and the directions which he had received from Columbia Oil before the meeting as to how he should vote such stock, will be discussed in more detail in Point III hereof.

Two days following the stockholders' meeting of Panhandle Eastern, Mokan instituted an action, pursuant to Section 31 of the Delaware Corporation Law* in the Court of Chancery of the State of Delaware, to review the election of directors and officers of Panhandle Eastern at the stockholders' meeting (R. 510-514). The bill of complaint alleged that the by-laws of Panhandle Eastern had been amended at the meeting to increase the Board of Directors from nine to fourteen members and that fourteen directors, including the five additional directors nominated by the representatives of Mokan, had been duly elected and had qualified (R. 511). The bill further alleged that the by-laws had been amended at the meeting to provide for the election of officers by stockholders, and that Messrs. Maguire, Neuner, Watkins and Tringham had been duly elected as President, Vice-President, Secretary and Treasurer, respectively, of Panhandle Eastern (R. 511-512). The bill prayed that the Chancellor determine the validity of the election of the

* Section 31 of the General Corporation Laws of the State of Delaware is printed in full in Appendix D at the end of this brief.

five additional directors nominated by the representatives of Mokan, and declare that said persons were duly and validly elected to the Board of Directors; and that the Chancellor determine the validity of the election of Messrs. Maguire, Neuner, Watkins and Tringham to the offices of President, Vice-President, Secretary and Treasurer, respectively (R. 513-514).

On June 19, 1940, after a full hearing before the Chancellor and during the pendency of the instant appeal, the Chancellor entered his final decree* in that proceeding dismissing Mokan's bill of complaint holding: (a) that none of the additional five directors nominated by the representatives of Mokan were elected as directors of Panhandle Eastern at the stockholders' meeting, (b) that Maguire, Neuner, Watkins and Tringham had not been elected as officers of Panhandle Eastern at the meeting, and (c) that the action at the annual meeting of the representatives of Mokan purporting to amend the by-laws of Panhandle Eastern "was void and without effect and such by-laws were not modified in any respect whatsoever by any action taken at said meeting".

Instead of rendering a formal opinion the Chancellor wrote an opinion letter† dated June 11, 1940, to counsel for the interested parties setting forth his views on the matter. It necessarily follows from the Chancellor's decision that Mr. Dunn's votes at the meeting in voting the majority stock were valid and legal. No appeal has been taken from the Chancellor's order.

In the meantime, on March 23, 1940, Mokan's attorneys made the intervention application in the name of Panhandle

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* For the convenience of this Court, the final decree of the Chancellor is printed at the end of this brief as Appendix B.

† For the convenience of this Court, a copy of this opinion letter is printed at the end of this brief as Appendix C.

Eastern which is the subject of this appeal (R. 412-422). In its opinion handed down on April 6, 1940 (R. 520-526) on which the order of dismissal (R. 565) was entered, the court below held: (1) that the application was not authorized by Panhandle Eastern, (2) that the attorneys whose names appear on said application were not authorized by Panhandle Eastern to act in its behalf, and (3) that Mr. Dunn had duly voted the shares of stock of Columbia Oil in Panhandle Eastern on all matters on which he had voted at the annual stockholders' meeting in accordance with the provisions of the Consent Decree and pursuant to valid directions from Columbia Oil (R. 525-526). Thus, the Court granted the motions of Columbia Oil and Columbia Gas to dismiss the application on the specific grounds urged by Columbia Oil in its motion papers (R. 515).

The instant appeal is from the order of the court below dismissing the aforementioned intervention application.

POINT I.

Appellee, Columbia Oil & Gasoline Corporation, by its motion to dismiss the application to intervene, with supporting affidavits, properly raised the question of the authority of the attorneys prosecuting this appeal to act on behalf of Panhandle Eastern Pipe Line Company in making and prosecuting the intervention application.

It is settled that a court may in its discretion, at any stage of a case, require an attorney to show his authority to bring proceedings on behalf of a client, and that the appropriate manner in which to raise this question is by motion to dismiss such proceedings supported by affidavits. This Court conclusively established this principle in the

leading case of *The Pueblo of Santa Rosa* v. *Fall*, 273 U. S. 315, which has been consistenly followed by the courts in later decisions. There, as here, a motion was made by the defendants, supported by affidavits, to dismiss the bill upon the ground that the plaintiff had never authorized the suit and had never authorized the attorneys to bring or prosecute it on its behalf. This Court agreed with the conclusions of the District Court in dismissing the bill, except to the extent that that court had dismissed it upon the merits, and, therefore, remanded the cause to the District Court with directions to dismiss the bill on the ground that the suit was brought by counsel without authority, but without prejudice to the bringing of any other suit thereafter by and with the authority of the plaintiff. This Court said at page 319:

> "Whether, as a matter of practice, the challenge to the authority of counsel was seasonably interposed, it is not important to decide, for in any event, the trial court, or this court, has power, at any stage of the case, to require an attorney, one of its officers, to show his authority to appear."

In its brief the appellant argues (p. 28) that since the motions to dismiss set forth affirmative matters and at the same time do not contain denials of the allegations in the intervention application, they constitute affirmative defenses under Rule 8(c) of the Rules of Civil Procedure and must be deemed to admit the truth of the allegations of the intervention application under Rule 8(d). But Rule 8(d) expressly declares that such a result only applies to averments in a pleading to which a responsive pleading is required. The motions to dismiss, however, are not responsive pleadings. In fact, the application to intervene requested in its prayers for relief (R. 423) that the court

enter an order allowing the applicant to file the application and be made a party to the anti-trust suit. The court entered an order merely setting the application down for hearing and directing that the parties be given notice thereof (R. 425-426). At no time did the court enter any order granting the applicant leave to file its application or directing the parties in the anti-trust suit to answer the same. Under such circumstances the motions cannot be responsive pleadings.

The contention of the appellant is particularly surprising in view of its next preceding argument to the effect that the motions did not raise any question concerning the merits (Appellant's Brief, p. 27), because it was made and granted on the limited grounds of the lack of authority of the attorneys to represent Panhandle Eastern in making or prosecuting the application on its behalf. Since the motions admittedly did not raise any question on the merits, how is it possible for the appellant to argue that the merits of the allegations of its application were at issue before the court below?

POINT II.

The appeals should be dismissed on the ground that the order appealed from is not a final order and, therefore, is not appealable to this or any other court under the provisions of the Expediting Act governing appeals in equity suits under the Federal Anti-Trust Laws, wherein the United States is complainant.

The Expediting Act (U. S. C. A., Title 15, Sections 28 and 29) consists of two sections, the second section reading as follows (U. S. C. A., Title 15, Section 29):

> "APPEALS TO SUPREME COURT. In every suit in equity brought in any district court of the United States under any of the laws mentioned in the preceding section, wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof. (Feb. 11, 1903, c. 544, §2, 32 Stat. 823; Mar. 3, 1911, c. 231, §291, 36 Stat. 1167.)"

The preceding section to which reference is made deals with suits in equity under the Federal Anti-Trust Laws, wherein the United States is complainant.

The suit which is pending in the District Court, in which the appellant sought to intervene, is a suit in equity under the Federal Anti-Trust Laws, wherein the United States is complainant, and, therefore, it comes within the class of cases to which the Expediting Act applies.

Obviously, the order of the District Court, dismissing appellant's application for leave to intervene (R. 565) on the limited ground that the attorneys were not authorized by the appellant to bring or prosecute the application on its behalf (R. 520), cannot be a final order on the merits. In fact, the appellant argues at some length in its brief (p. 27) that the order was not a determination of the merits of that application.

Under these circumstances this order cannot have the necessary finality on which to base an appeal to this Court or to any other court under the provisions of the Expediting Act as construed by this Court in the case of *United States* v. *California Cooperative Canneries*, 279 U. S. 553, where this Court said at page 558:

> "Thus, Congress limited the right to review" (referring to the provisions of the Expediting Act) "to an appeal from the decree which disposed of all

matters, see *Collins* v. *Miller*, 252 U. S. 364; and it precluded the possibility of an appeal to either court'' (referring to the Circuit Court of Appeals and to this Court) ''from an interlocutory decree.''

POINT III.

The Court below was correct in dismissing the intervention application in the name of Panhandle Eastern Pipe Line Company because it was not authorized by Panhandle Eastern Pipe Line Company, and the attorneys making said application and prosecuting this appeal have not been authorized by Panhandle Eastern Pipe Line Company to act in its behalf.

The mere statement of the facts in this case demonstrates that the intervention application in the name of Panhandle Eastern was unauthorized and that the court below was correct in dismissing it. The representatives of Mokan, who are prosecuting this appeal, predicate their authority to make this application on Panhandle Eastern's behalf on resolutions (R. 423, 425), which they claim were adopted over the opposing vote of Mr. Dunn, the majority stockholder, at the annual meeting of stockholders of Panhandle Eastern held on March 11, 1940. They say that Mr. Dunn's vote was improperly and illegally cast because he did not exhibit at the meeting specific instructions from Columbia Oil under the provisions of the Consent Decree (R. 147), directing him to oppose such resolutions, and, in addition, because the intervention application contemplated by said resolutions was directed against Columbia Oil, and, therefore, even if he did have specific directions from Columbia Oil he was disqualified from voting upon such directions (R. 462). Similar tactics were employed through-

out the meeting by the minority stockholders, led by Mr. Logan and his associates representing Mokan, in attempting to disqualify Mr. Dunn, the majority stockholder, from voting in opposition to any motions or resolutions which the minority interests moved for adoption at the meeting (R. 428-487).

The proceedings at the meeting disclose a most disorderly attempt by minority stockholders to wrest control of the meeting from Mr. Dunn, the majority stockholder, who was appointed Trustee of Columbia Oil's stock under the Consent Decree in the Government's anti-trust suit and who is the Government's representative in supervising the operations of Panhandle Eastern. These minority stockholders claim that by their tactics they succeeded at the meeting in amending the by-laws of Panhandle Eastern to provide (a) for the increase of the Board of Directors from nine to fourteen directors, (b) for officers to be chosen by the stockholders instead of by the directors, and (c) for all officers' salaries to be fixed by the stockholders instead of by the directors, despite the fact that the majority stockholder voted in opposition to these proposed amendments (R. 451, 460), and despite the further fact that no notice of the amendments was contained in the notice of the meeting (R. 500-501) in violation of the provisions of the by-laws (R. 499). The minority interests further claim that there were duly elected, over the opposing vote of the majority stockholder (R. 458), five additional directors, who were nominees of Mokan, in addition to the nine directors who had been elected, of which three were nominees of Mokan, thus, claiming that they had succeeded in seizing control of the Board of Directors. They further claim that a president, vice-president, secretary and treasurer of their own choosing were elected over the opposing vote of the majority stockholder (R. 460).

The Chancellor of State of Delaware has already decreed that this attempted sleight-of-hand by the representatives of Mokan was wholly void and of no effect, that they had not succeeded in amending the by-laws at the meeting, and that they had not succeeded in electing five additional directors and new officers of their own choosing (Appendix A).

Mr. Creveling, who is thus officially recognized as the President of Panhandle Eastern, has submitted an affidavit (R. 427), in which he states that neither the duly constituted directors nor the duly constituted officers of Panhandle Eastern authorized Mr. Logan and his associates, who are prosecuting the instant intervention application in the name of Panhandle Eastern, to act on behalf of Panhandle Eastern in the matter. In fact, Mr. Logan and his associates do not claim that their authority to prosecute the application emanates from the directors or the officers of Panhandle Eastern. They claim their alleged authority solely by reason of the alleged adoption at the stockholders' meeting over the opposing vote of Mr. Dunn, the majority stockholder, of certain resolutions, providing, among other things, for Panhandle Eastern to intervene in the Government's anti-trust suit (R. 462). Therefore, it is only necessary to consider whether the vote of Mr. Dunn, as Trustee, was properly and legally cast under the provisions of the Consent Decree and pursuant to the directions received from Columbia Oil, the beneficial owner of the stock held by him as such Trustee.

Enormous responsibilities and obligations are imposed on Mr. Dunn, as Trustee of Columbia Oil's stockholdings in Panhandle Eastern under the Consent Decree. Panhandle Eastern is an important corporation which enjoys large earnings. Columbia Oil's stock in Panhandle Eastern consists of a majority of the issued and outstanding

common stock and all of the issued and outstanding preferred stock (R. 429, 431), which, because of cumulative voting (R. 489), is entitled to elect six of the nine directors of Panhandle Eastern (R. 523). In the appointment of Mr. Dunn, as Trustee under the Consent Decree, the Government realized the responsibilities placed upon his shoulders. The court below, in discussing this aspect of the matter, remarked (R. 522):

> "The selection of Gano Dunn as Trustee was made by the Attorney General of the United States as the person best qualified to serve in a very difficult and exacting position from a group of names submitted to him."

In order to enable him to discharge his exacting duties, Mr. Dunn is vested with equally broad discretionary powers under the Consent Decree. Pursuant to the provisions thereof (R. 146), he holds as Trustee the legal title to all Columbia Oil's stock in Panhandle Eastern and is authorized to exercise "all the rights and privileges incidental to absolute ownership thereof" subject to certain conditions. As such Trustee, he is given broad discretionary voting powers. He is authorized to vote Columbia Oil's stock for as many directors of Panhandle Eastern as the number of shares thereof might be entitled to elect; he is to act as one of the directors and the remainder to be elected by him are to be selected from among persons recommended by Columbia Oil, in conference with him and with his advice. He is also authorized to remove and replace such directors with others of his own choosing (R. 146). He is also given broad discretionary powers with respect to voting the stock upon all other questions, in the following terms (R. 147):

> "(b) To vote said stock upon all other questions and matters in which the stock is entiled to vote, as

directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree;".

When Columbia Oil received notice of the annual meeting of the stockholders of Panhandle Eastern to be held on March 11, 1940, which specified only two items of business to be acted upon at the meeting, namely, (a) the election of directors for the ensuing year, and (b) the management's proposed amendment to the certificate of incorporation to provide for the payment of participating dividends during any year when additional common stock is issued (R. 500), Columbia Oil in pursuance of the provisions of the decree promptly recommended certain persons to Mr. Dunn, in conference with him and with his advice, from whom Mr. Dunn selected six, who would receive his vote on the election of directors at said meeting (R. 504-505, 518-519). Columbia Oil also gave appropriate instructions regarding the manner in which Mr. Dunn should vote the stock on the management's proposed amendment to the certificate of incorporation (R. 503, 518), which instructions were subsequently modified by later instructions (R. 506-507, 519). As to all other matters which might come before the meeting, Columbia Oil gave Mr. Dunn the following instructions on how he should vote the stock (R. 503, 518):

> "that as to all other matters except election of directors, which might come before said meeting, he should vote said shares as, in his discretion, seemed best for the interest of Panhandle Eastern Pipe Line Company and generally to support the management; that, in case any matters were presented at the meeting on which he had any doubt as to how to vote, he could adjourn the meeting for a sufficient time to confer by telephone with the representatives of Columbia Oil & Gasoline Corporation."

Since Mr. Dunn was authorized by the Consent Decree to vote the stock on all questions other than the election of directors as directed by the beneficial owners thereof, except when such directions were inconsistent with the purposes of the decree, and since Columbia Oil's directions were to vote the stock on such matters as in his discretion seemed best for the interest of Panhandle Eastern and generally to support the management, Mr. Dunn was duly vested with such broad discretionary powers that he could vote the stock on such matters at the meeting in such manner as his judgment might dictate.

Thus, when Mr. Dunn attended the meeting, he had received from Columbia Oil all the instructions regarding the voting of the stock which it was humanly possible to give him in respect to the contemplated items of business to be transacted at the meeting as well as in respect to any surprise matters which might come before the meeting. As the court below said (R. 523):

> "From the foregoing, it appears that Gano Dunn attended the annual meeting of March 11 girded with his own authority as Trustee, supplemented by all the directions from Columbia Oil that could have been anticipated in the normal course of human events."

But the first objection which Mr. Logan and his associates made to Mr. Dunn's vote, cast in opposition to the resolutions contemplating the making of the intervention application, was that Mr. Dunn did not exhibit specific instructions that he should vote in opposition to such resolutions. The answer to this proposition is contained in the Consent Decree and Columbia Oil's directions thereunder. The Decree did not provide that Columbia Oil must give specific directions and Columbia Oil saw fit not to give specific

directions, leaving to Mr. Dunn's discretion the manner in which he should vote on all surprise motions. Obviously, the provision requiring Mr. Dunn to vote as directed by the beneficial owner of the stock was inserted in the Decree for the protection of Columbia Oil. It was not placed in the decree for the benefit of any other party. Hence, Mokan, or any other minority stockholder of Panhandle Eastern, cannot complain about the instructions which Mr. Dunn received from Columbia Oil as being too general. The only one affected by the manner in which Mr. Dunn carried out its instructions is Columbia Oil, and Columbia Oil was satisfied with the manner in which Mr. Dunn had carried out its directions. Columbia Oil's Board of Directors subsequently approved the manner in which Mr. Dunn voted (R. 509-510).

The contentions of Mr. Logan and his associates merely boil down to the surprising proposition that Mokan, as a minority stockholder in Panhandle Eastern, is legally entitled at any time it sees fit to overrule the vote of the majority stockholder and to take over the control of Panhandle Eastern. This must necessarily be the contention of Mr. Logan and his associates, because it follows from his objections at the meeting that, whenever the representatives of Mokan see fit to make a surprise motion or to submit for adoption a surprise resolution, Mr. Dunn cannot vote Columbia Oil's stock because no one could have anticipated such a surprise action and, therefore, Mr. Dunn could not possibly have obtained specific instructions as to how to vote thereon. This is indeed a strange contention when it is realized that Mr. Dunn is the Government's representative under the Consent Decree. Are his votes of the majority stock in Panhandle Eastern to be thus easily challenged?

The second objection which was made by the representatives of Mokan to Mr. Dunn's vote, cast in opposition to the resolutions in question, was that, since the intervention application contemplated by the resolutions was directed against Columbia Oil and others, Mr. Dunn could not vote according to the directions of Columbia Oil. There are two answers to this proposition, the first being that Columbia Oil's instructions to Mr. Dunn left it entirely to his judgment as to how to cast his vote; the second answer is that, even in the complete absence of directions from Columbia Oil, Mr. Dunn would still be able to exercise the same broad discretion in voting under the provisions of the Consent Decree.

The vote of Mr. Dunn, as Trustee under the Consent Decree and as the holder of record of all of Columbia Oil's stock in Panhandle Eastern (R. 150, 448), was legal and valid under the laws of Delaware (Sections 17 and 18 of the Delaware Corporation Law*) and under the provisions of the by-laws of Panhandle Eastern (R. 489-490). Mr. Dunn's vote was legal and proper and he was acting within the powers vested in him by the Consent Decree and within the directions received from Columbia Oil. So the court below found (R. 525):

> "In construing the language of the consent decree, I find that the votes cast by Gano Dunn were authorized by the powers conferred upon him by the consent decree and that his votes were well within the directions given to him by Columbia Oil."

One other matter merits consideration. The general scope of Columbia Oil's directions, within which Mr. Dunn

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* Sections 17 and 18 of the General Corporation Laws of the State of Delaware are printed in full in Appendix D at the end of this brief.

was to exercise his discretion in voting at the meeting, was that he should vote the stock as, in his discretion, seemed best for the interest of Panhandle Eastern and generally to support the management. In voting the majority stock against the resolution providing for Panhandle Eastern to intervene in the Government's anti-trust suit, Mr. Dunn's action was definitely within the scope of these directions. Mokan had already attempted to intervene in the anti-trust suit on substantially the same state of facts on two different occasions (R. 284-312, 362-371), the first application (R. 308) having been made by Mokan both in its own right and also as a derivative stockholder's application on behalf of Panhandle Eastern. Both these applications had been denied (R. 321-322, 371). It definitely appears, therefore, that Mr. Dunn was acting for the benefit of Panhandle Eastern in voting against resolutions which might very well subject it to the payment of large counsel fees on a matter which probably would be unproductive of results. Furthermore, he undoubtedly saw no reason for Panhandle Eastern employing the attorneys of the minority stockholders for such a purpose. Panhandle Eastern had its own counsel who would have been well able to undertake such a litigation if it had appeared advisable to Panhandle Eastern to follow such a course.

In the appellant's brief (pp. 31-38), a number of cases involving minority stockholders' suits are referred to and cited, and the general principle is developed that a majority stockholder occupies a fiduciary position to the minority stockholders. We cannot understand what application these cases have to the case at bar. This is not a minority stockholders' suit. This is a suit brought in the name of the corporation by attorneys of a minority stockholder claiming that they have been employed by the corporation to bring and prosecute the action under resolu-

tions of its stockholders, which were never adopted because the majority stockholder voted the majority stock against the resolutions.

Furthermore, Mr. Dunn is not an ordinary stockholder; he is acting as Trustee of the majority stock under the provisions of a Consent Decree. He is already a fiduciary. His primary duties in his capacity as such Trustee are to the Government and to the court of his appointment. His vote at the stockholders' meeting, which is the only question involved in this case, was neither fraudulent or oppressive as to minority stockholders because, as we have just shown, he voted in the interests of Panhandle Eastern and well within the powers vested in him by the Consent Decree.

It is well settled that a majority stockholder does not become a trustee for a minority in any event, unless the action of the majority stockholder is fraudulent and oppressive. Therefore, the minority stockholders of Panhandle Eastern could not even maintain a minority stockholders' suit predicated on the vote which Mr. Dunn cast in opposition to the resolutions in question. But the instant suit, as we have shown, is not a minority stockholders' suit. The sole question involved is the authority of the attorneys to make and prosecute the intervention application in the name of the corporation; not the question of whether a majority stockholder occupies a fiduciary relationship to the minority stockholders. The later question assumes the proposition that the minority stockholders' suit has been properly brought.

Conclusion.

It is our firm belief that no case could be conceived of in which the facts would show such an utter lack of authority on the part of attorneys to represent a corporation in

bringing and prosecuting a proceeding on its behalf. Even if we should assume, however, that such authority existed, then the intervention application would be subject to the same infirmities as Mokan's fourth intervention application. These infirmities have been fully discussed in our brief on appeal No. 268.

For the foregoing reasons, therefore, this appellee, Columbia Oil & Gasoline Corporation, respectfully requests this Court to dismiss for lack of jurisdiction appellant's appeal from the order of the District Court dismissing its intervention application, or, if this Court considers that it has jurisdiction, to affirm the order of the District Court.

Respectfully submitted,

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Of Counsel:
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JAMES B. ALLEY.

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Appendix A.

Reported in 32 Federal Supplement, 474.

UNITED STATES v. COLUMBIA GAS & ELECTRIC CORPORATION, *et al.*

No. 1099.

DISTRICT COURT, D. DELAWARE.

April 6, 1940.

In Equity. Anti-trust suit by the United States of America against the Columbia Gas & Electric Corporation and others, wherein a consent decree was entered. On motion to dismiss application by the Panhandle Eastern Pipe Line Company to become a party for a limited purpose.

Motion granted.

Robert J. Bulkley, of Cleveland, Ohio, Russell Hardy, of Washington, D. C., and Arthur G. Logan (of Logan & Duffy), of Wilmington, Del., for petitioner.

William H. Button and James B. Alley (of Auchincloss, Alley & Duncan), both of New York City, and Daniel O. Hastings (of Hastings, Stockly & Layton), of Wilmington, Del., for Columbia Oil & Gasoline Corporation.

Douglas M. Moffat (of Cravath, deGersdorff, Swaine & Wood), of New York City, and Clarence A. Southerland (of Southerland, Berl, Potter & Leahy), of Wilmington, Del., for Columbia Gas & Electric Corporation.

Thomas J. Lynch, Sp. Asst. to Atty. Gen. and Stewart Lynch, U. S. Atty., of Wilmington, Del., for the United States.

Edward N. Goodwin, of New York City, and Hugh M. Morris and Edwin D. Steel, Jr., both of Wilmington, Del., for Panhandle Eastern Pipe Line Co.

NIELDS, District Judge.

Motion to dismiss application to become a party for a limited purpose.

In the anti-trust suit of United States *v.* Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, and others, a consent decree was entered by this court January 29, 1936. The closing paragraph of the decree provides: "* * * that Panhandle Eastern (Panhandle Eastern Pipe Line Company), upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

The sole question raised by the motion to dismiss is whether Panhandle Eastern has made a "proper application" to become a party to this suit. March 23, 1940, a document in the form of an unverified application to become a party was filed. This document is signed "Panhandle Eastern Pipe Line Company By Arthur G. Logan". Immediately below this signature appear "Arthur G. Logan Logan & Duffy Attorneys for Petitioner, 303 Delaware Trust Building, Wilmington, Delaware". Below and to the left of these signatures the following names of counsel are typed: "Russell Hardy", "Robert J. Bulkley", "Arthur G. Logan".

The propriety of the application to become a party turns upon the terms of the consent decree. By Section III of that decree Gano Dunn was appointed Trustee for the purposes and with the powers and duties set forth in that section. The decree further provides:

"That within 10 days after the entry of this decree Columbia Oil shall transfer all of its stock now owned and thereafter all stock subsequently acquired in Panhandle Eastern, having present or potential voting rights, to said trustee to hold the legal title to said stock and to exercise all the rights and privileges incidental to the absolute ownership thereof upon the following terms and conditions:

"(a) To vote said stock for the election of as many directors of Panhandle Eastern as the number of shares thereof may be entitled to elect; Provided, that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recommended by the beneficial owner of said stock, in conference and

with the advice of the trustee, and that, as to the directors so selected, the trustee is empowered to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree; subject, however, in this as well as in the exercise of all other powers to the authority of this Court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder;

"(b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree."

The business of a corporation is conducted by its board of directors and officers. The control of Panhandle Eastern was vested in the Trustee. He was one of the directors. He shares with Columbia Oil in the selection of the others. He was empowered to remove any of the other directors and replace such directors by others of his own choosing upon his own motion. As the board of directors chose the officers, the Trustee was the final word in the conduct of the business of Panhandle Eastern. This control should be borne in mind in construing paragraph (b) of the decree.

The selection of Gano Dunn as Trustee was made by the Attorney General of the United States as the person best qualified to serve in a very difficult and exacting position from a group of names submitted to him.

Notice of the regular annual stockholders' meeting of Panhandle Eastern to be held March 11, 1940, was duly sent to stockholders. It notified them that the proposed business to be considered at the meeting would be the election of directors for the ensuing year, an amendment of the certificate of incorporation, and such other business as might properly come before the meeting.

Mindful of paragraph (b) of Section III of the decree, Gano Dunn obtained from the executive head of Columbia Oil, the beneficial owner of the stock of Panhandle Eastern held by him, directions as to voting said stock at the annual meeting. March 5, 1940, Don M. Wilson, a vice president of Columbia Oil and acting president, directed Gano Dunn to vote the shares of stock held by him in favor of the amendment to the articles of incorporation proposed by the Board, and as to other matters, excepting the election of directors, to vote said shares "as, in his discretion, seemed best for the interest of Panhandle Eastern Pipe Line Company and generally to support the management; that, in case any matters were presented at the meeting on which he had any doubt as to how to vote, he could adjourn the meeting for a sufficient time to confer by telephone with the representatives of Columbia Oil & Gasoline Corporation". March 8, 1940, the board of directors of Columbia Oil adopted a resolution expressly approving said directions and also approving a letter from Wilson to Dunn containing the following directions:

"Dear Mr. Dunn:

After consultation with you, as Trustee holding the voting stock in Panhandle Eastern Pipe Line Company, which is owned by this Corporation, and with your advice, we recommend the following individuals for your selection as Directors of Panhandle Eastern Pipe Line Company, and request that you elect them as such by vote of the stock which you hold as Trustee:

Joseph A. Bower	165 Broadway	New York City
Joe D. Creveling	90 Broad Street	New York City
Gano Dunn	80 Broad Street	New York City
Walter G. Mortland	37 East 64th St.	New York City
Richard C. Patterson, Jr.	1270 Sixth Avenue	New York City
Robert C. Winmill	1 Wall Street	New York City

Very truly yours,

(signed) D. M. Wilson
Vice President."

Before determining upon the six directors named in the above letter, Columbia Oil in conference with Dunn recommended certain persons as directors and from among the number so recommended Dunn selected the six above named as the six of the nine directors of Panhandle Eastern which the stock beneficially owned by Columbia Oil was entitled to elect.

From the foregoing, it appears that Gano Dunn attended the annual meeting of March 11 girded with his own authority as Trustee, supplemented by all the directions from Columbia Oil that could have been anticipated in the normal course of human events.

March 11, 1940, at the opening of the annual stockholders' meeting, Creveling, President of Panhandle Eastern, took the Chair and called the meeting to order as provided in the by-laws. The Chairman announced the presence of a quorum. Thereupon, Logan, who appeared as a stockholder, moved that Dixon, as associate of Maguire, be made Chairman of the meeting "from this time forward." Creveling declared the motion out of order. Thereupon, Logan took an appeal from the ruling of the Chairman. A vote was taken. Gano Dunn voted to uphold the Chair while Logan and his associates voted the contrary. Creveling announced that his ruling had been upheld.

Shortly thereafter, Logan moved that Article II of the by-laws be amended to read: "The property and business of this corporation shall be managed by its board of directors, consisting of 14 persons."

This drastic action of increasing the number of directors from 9 to 14 was proposed without notice thereof, and evidently with the intent to acquire control of a large and valuable property. The Chairman declared the motion out of order in view of Article 42 of the by-laws, providing that the by-laws may be altered or amended "if notice of the proposed alteration or amendment be contained in the notice of the meeting". An appeal was taken with the same result as in preceding instances.

Motions were made that the Class B stock be not allowed to vote; that officers of the company be chosen by

the stockholders; that their salaries be fixed by the stockholders; that Maguire be made president and Tringham treasurer of the company. These motions were disposed of as the others had been. In each instance Dunn voted the majority of the voting stock against the motions, and Logan and his associates voted for the motions.

Hand moved that Panhandle Eastern become a party to the suit of Missouri-Kansas Pipe Line Company and Dammann against the Columbia companies. This motion was similarly disposed of. Hand further moved that the Class A stock of Panhandle Eastern be redeemed. This motion met the same fate.

The following motion concisely states the position of Logan and his associates throughout the meeting: "Mr. President, I now move that this corporation refuse to accept any vote of Mr. Gano Dunn on any question unless he first establishes by competent proof that he has been directed by Columbia Oil and Gasoline Corporation to cast his vote in accordance with the way he may cast it due to the fact that this corporation is aware of the limitation upon his powers."

Later, Hand moved that Panhandle Eastern be directed to bring six suits as suggested in a letter of January 15, 1940 from Missouri-Kansas Pipe Line Company to Panhandle Eastern. The fourth item of this letter was an instruction that Panhandle Eastern intervene in this anti-trust suit by the United States pending in this court. At this meeting a resolution was offered by Hand that Panhandle Eastern be directed to make the present application. Gano Dunn, holding a majority of the voting stock of Panhandle Eastern, voted against the resolution and it was accordingly defeated.

It was further moved: "That this corporation will employ Robert J. Bulkley of Cleveland, Ohio, Russell Hardy of Washington, D. C. and Arthur Logan of Wilmington, Delaware, as its attorneys to take action provided for herein," and further, "that the officers of this corporation arrange and pay a reasonable compensation to said attorneys for such services."

Thereafter, the meeting adjourned, although as to adjournment Logan objected that Gano Dunn was not qualified to vote without producing before the meeting specific instructions from Columbia Oil.

After adjournment Logan and his associates held a meeting of their own. No quorum was present. Holders of a minority of the stock of Panhandle Eastern, either in person or by proxy, were the only persons present. The motions of Logan and of his associates, defeated at the regular meeting, were resubmitted at the subsequent meeting, and purported to be passed.

March 20, 1940, a special meeting of the Board of Directors of Columbia Oil was held. The Chairman stated that he had received an official stenographic transcript of the proceedings of the annual meeting of stockholders of Panhandle Eastern of March 11, 1940. Upon consideration of those minutes and of the manner in which Gano Dunn, Trustee, had voted the stock in Panhandle Eastern, it was resolved: "That all of the votes and all of the positions taken by said Gano Dunn as Trustee or otherwise at said stockholders' meeting be and the same hereby are in all respects approved, ratified and confirmed".

In construing the language of the consent decree, I find that the votes cast by Gano Dunn were authorized by the powers conferred upon him by the consent decree and that his votes were well within the directions given to him by Columbia Oil. From this finding, it follows that the so-called application filed in this proceeding was not authorized by Panhandle Eastern or by any responsible body having control of said corporation.

The motion to dismiss the alleged application of Panhandle Eastern for leave to become a party hereto and for other relief must be granted for the following reasons:

1. Said application was not authorized by Panhandle Eastern.

2. The attorneys whose names appear on said application as attorneys for Panhandle Eastern were not author-

ized by that company to act in its behalf in filing such application.

3. Gano Dunn, Trustee, duly voted the shares of stock of Panhandle Eastern on all matters on which he voted at the annual meeting of March 11, 1940, in accordance with provisions of said consent decree, and pursuant to valid directions from Columbia Oil.

An order may be submitted.

Appendix B.

IN THE

COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MISSOURI-KANSAS PIPE LINE COMPANY,
Complainant,

vs.

PANHANDLE EASTERN PIPE LINE COMPANY, JOE D. CREVELING, LOUIS F. SPERRY, JOSEPH J. BODELL, DAVID BOYD-SMITH, HUBERT E. HOWARD, GEOFFREY MELLOR and WILLIAM C. TRINGHAM,
Respondents.

FINAL DECREE

AND NOW, TO-WIT, this 19th day of June, A. D. 1940, the above stated cause having come on to be heard before the Chancellor, upon testimony of witnesses and exhibits, and the said cause having been fully argued before the Chancellor,

IT IS ORDERED, ADJUDGED AND DECREED BY THE CHANCELLOR as follows:

(1) That the Bill of Complaint filed in the above-entitled cause shall be and the same is hereby dismissed.

(2) That at the annual meeting of stockholders of Panhandle Eastern Pipe Line Company held on March 11, 1940,

each of the following persons was duly elected a director of said corporation, to serve for one year from date of said meeting, or until his successor should be elected and should qualify:

Joe D. Creveling
Joseph A. Bower
William J. Bulkley
A. Faison Dixon
Gano Dunn
William C. Maguire
Walter C. Mortland
Richard C. Paterson
Robert C. Winmill

(3) That none of the following persons, who were nominated for directors of Panhandle Eastern Pipe Line Company at said meeting, were duly or properly elected directors thereat:

Joseph J. Bodell
David Boyd-Smith
Hubert E. Howard
Geoffrey Mellor
William C. Tringham

(4) That at the date of the said annual meeting of stockholders, and on April 25, 1940, the date when the cause was heard, the following persons were the officers of the corporation:

Joe D. Creveling, President
Gerard J. Neuner, Vice-President in Charge of Operations
Robert D. Field, Vice-President
Leith V. Watkins, Secretary and Controller
Louis F. Sperry, Treasurer

(5) That although certain stockholders at said annual meeting of Panhandle Eastern Pipe Line Company pur-

ported to elect the following persons as officers of the corporation:

William G. Maguire	President
Gerard J. Neuner	Vice-President
Leith V. Watkins	Secretary
William C. Tringham	Treasurer

none of such persons were duly or properly elected officers by virtue of such action.

(6) That the action of certain stockholders at said annual meeting purporting to amend the by-laws of Panhandle Eastern Pipe Line Company was void and without effect and such by-laws were not modified in any respect whatsoever by any action taken at said meeting.

(7) That costs of the above-entitled cause shall be paid by the Complainant, Missouri-Kansas Pipe Line Company, within 30 days from the date hereof, or attachment.

/s/ Wm. Watson Harrington
Chancellor.

Appendix C.

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

WILLIAM WATSON HARRINGTON
Chancellor

Chancellor's Chambers
Dover, Delaware
June 11th, 1940

In re Missouri Kansas Pipe Line Co. *vs.* Panhandle Eastern Pipe Line Co. *et al.*

HON. HUGH M. MORRIS,
HON. DANIEL O. HASTINGS,
ARTHUR T. LOGAN, Esq.,
CHRISTOPHER L. WARD, JR., Esq.,
Attorneys-at-law,
Wilmington, Delaware.

Application to review an election of directors and officers under Section 31 of the Delaware Corporation Laws.

Gentlemen:

After a thorough examination of the record of the proceedings of the stockholders' meeting in question, my conclusion is that the fair inference to be drawn therefrom is that the votes taken at that meeting were based on stock ownership, and not on the mere votes of the various persons present, regardless of the number of shares owned by them. It, therefore, necessarily follows that the corporate by-laws were not changed at that meeting, and that the Board can only consist of nine members, and not of fourteen as is contended by Mr. Logan.

There may be cases where the facts and circumstances are such as to justify the conclusion that the right to a stock vote has been waived by a failure to expressly demand it on a particular vote; but, as I view it, this is not a case of that nature.

The provisions of the court order under which title to a large block of stock was vested in Mr. Dunn, have an important bearing on this conclusion; and this is particularly true as it is difficult to escape the conclusion that all of the provisions of this order were well known to the Mokan group, who claim that they ultimately controlled the meeting. From this aspect of the case, it is unnecessary for me to consider whether the by-laws could have been amended, without notice, or whether the fact that they were originally adopted by the incorporators, who were the only stockholders at that time, is an answer to any such contention.

There is no dispute as to the validity of the election of nine members of the Board, but there is a dispute as to the other five persons who, also, claim to be members of that Board. In view of the possible complications growing out of this contention, a speedy determination of this case is essential to efficient corporate management; and, because my conclusion is largely based on questions of fact, considered in connection with the pertinent statutory, charter and by-law provisions, it seems unnecessary to delay an announcement until I shall have had an opportunity to write an opinion.

Whatever foundation there may be for the charge that Mokan has been unfairly treated in the past by the corporation holding the controlling stock interest in Panhandle Eastern, I do not see how that question can be considered in this controversy. Nor am I impressed by the contention that, even if Mr. Dunn's votes be considered as stock votes, they were void because he did not have the express directions of his principal with regard to certain matters that came before the meeting.

Counsel for the respondents may present such an appropriate order as will carry out these conclusions.

Yours sincerely,

/s/ W. W. Harrington.

WWH.B

Appendix D.

Sections of the General Corporation Laws of the State of Delaware Referred to in This Brief.

SECTION 17. POWER OF STOCKHOLDERS TO VOTE IN PERSON OR BY PROXY; LIMITATION OF POWER; CLOSING OF TRANSFER BOOKS OR FIXING DATE FOR DETERMINATION OF STOCKHOLDERS OF RECORD FOR CERTAIN PURPOSES; CUMULATIVE VOTING: QUORUM:—Unless otherwise provided in the Certificate of Incorporation, each stockholder, shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock held by such stockholder, but no proxy shall be voted on after three years from its date, unless said proxy provides for a longer period, and, except where the transfer books of the corporation shall have been closed or a date shall have been fixed as a record date for the determination of its stockholders entitled to vote, as hereinafter provided, no share of stock shall be voted on at any election for directors which shall have been transferred on the books of the corporation within twenty days next preceding such election of directors.

The board of directors shall have power to close the stock transfer books of the corporation for a period not exceeding fifty days preceding the date of any meeting of stockholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of capital stock shall go into effect or for a period of not exceeding fifty days in connection with obtaining the consent of stockholders for any purpose; provided, however, that in lieu of closing the stock transfer books as aforesaid, the by-laws may fix or authorize the board of directors to fix in advance a date, not exceeding fifty days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date

when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, or to give such consent, and in such case such stockholders and only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the corporation after any such record date fixed as aforesaid.

The Certificate of Incorporation of any corporation may provide that at all elections of directors of such corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them as he may see fit, which right, when exercised, shall be termed cumulative voting.

The provisions of this Section shall not apply, however, to corporations not for profit, for which it is desired to have no capital stock. Unless otherwise provided in the Certificate of Incorporation of a corporation which is to have no capital stock, or in an amendment thereto, each member of such corporation shall at every meeting of members be entitled to one vote in person or by proxy, but no proxy shall be voted on after three years from its date, unless said proxy provides for a longer period.

Subject to the provisions of this Chapter in respect of the vote that shall be required for a specified action, the Certificate of Incorporation or by-laws of any corporation

may specify the number of shares and/or the amount of other securities having voting power the holders of which (or in the case of a corporation with no capital stock, the number of members thereof having voting power who) shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business.

SECTION 18. FIDUCIARY STOCKHOLDERS; VOTING POWER OF; VOTING TRUSTS:—Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held, and persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy may represent said stock and vote thereon.

One or more stockholders may by agreement in writing deposit capital stock of an original issue with or transfer capital stock to any person or persons, or corporation or corporations authorized to act as trustee, for the purpose of vesting in said person or persons, corporation or corporations, who may be designated Voting Trustee or Voting Trustees, the right to vote thereon for any period of time determined by such agreement, not exceeding ten years, upon the terms and conditions stated in such agreement. Such agreement may contain any other lawful provisions not inconsistent with said purpose. After the filing of a copy of such agreement in the principal office of the corporation in the State of Delaware, which copy shall be open to the inspection of any stockholder of the corporation or any beneficiary of the trust under said agreement daily during business hours, certificates of stock shall be issued to the Voting Trustees to represent any stock of an original issue so deposited with them, and any certificates of stock so transferred to the Voting Trustees shall be surrendered and cancelled and new certificates therefor shall be issued to the Voting Trustees, and in the certificates so issued it shall appear that they are issued pursuant to such agree-

ment, and in the entry of such Voting Trustees as owners of such stock in the proper books of the issuing corporation that fact shall also be noted. Said Voting Trustees may vote upon the stock so issued or transferred during the period in such agreement specified; stock standing in the names of such Voting Trustees may be voted either in person or by proxy, and in voting said stock, such Voting Trustees shall incur no responsibility as stockholder, trustee or otherwise, except for their own individual malfeasance. In any case where two or more persons are designated as Voting Trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing said Trustees, the right to vote said stock and the manner of voting the same at such meeting shall be determined by a majority of said Trustees, or if they be equally divided as to the right and manner of voting the same in any particular case, the vote of said stock in such case shall be divided equally among the Trustees.

At any time within one year prior to the time of expiration of any such voting trust agreement as originally fixed or as extended as herein provided, one or more beneficiaries of the trust under such voting trust agreement may, by agreement in writing and with the written consent of such Voting Trustees, extend the duration of such voting trust agreement for an additional period not exceeding ten years. Said Voting Trustees shall, prior to the time of expiration of any such voting trust agreement, as originally fixed or as previously extended, as the case may be, file in the principal office of the corporation in the State of Delaware a copy of such extension agreement and of their consent thereto, and thereupon the duration of such voting trust agreement shall be extended for the period fixed in such extension agreement; provided, however, that no such extension agreement shall affect the rights or obligations of persons not parties thereto.

SECTION 31. ELECTION OF DIRECTORS ON FAILURE TO ELECT ON REGULAR DAY; ELECTION ORDERED BY CHANCELLOR; CONTESTED ELECTIONS; HEARING BEFORE CHANCELLOR; SERVICE:—If the election for directors of any corporation shall not be held on the day designated by the by-laws, the directors shall cause the election to be held as soon thereafter as conveniently may be; no failure to elect directors at the designated time shall work any forfeiture or dissolution of the corporation, but the Chancellor may summarily order an election to be held upon the application of any stockholder, and at any such election the shares of stock represented at said meeting, either in person or by proxy, shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the by-laws of the corporation to the contrary.

Upon the application by any stockholders, the Chancellor shall have power to hear and determine the validity of any election of any director or officer of any corporation organized under this Chapter and the right of any person to hold such office, and in case any such office is claimed by more than one person may determine the person entitled thereto; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation relating to the issue; and in case it should be determined that no valid election of the corporation has been held, the Chancellor shall have power to order an election to be held in accordance with the provisions of the first paragraph of this Section. In any such application service of copies of such petition upon the corporate resident agent of the corporation shall be deemed to be service upon the corporation and upon the person whose title to office is contested and upon the person, if any, claiming such office; and it shall be the duty of such resident agent to forward immediately a copy of said petition so delivered to him, or it, to the corporation and to the person whose title to office is contested and to the person, if any, claiming such office, in a post-paid, sealed registered letter addressed

to such corporation or such person at his or its last known postoffice address; and the Chancellor may make such further or other order respecting notice of such application as he may deem proper under the circumstances.

The Chancellor in any proceeding instituted under this Section shall have power to determine the right and power of persons claiming to own stock, to vote at any meeting of the stockholders authorized by or referred to in this Section.

The Chancellor shall have power to appoint a Master to hold any election provided for in this Section under such orders and powers as he shall deem proper; and he shall also have power to punish any officer or director for contempt, in case of disobedience of any order made by the Chancellor and may, in case of disobedience by any such corporation of any order made by the Chancellor, in his discretion, enter a decree against such corporation for a penalty in a sum not exceeding the sum of Five Thousand dollars ($5,000.00):

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1940

No. 268

MISSOURI-KANSAS PIPE LINE COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA, COLUMBIA GAS & ELECTRIC CORPORATION, COLUMBIA OIL & GASOLINE CORPORATION, GEORGE H. HOWARD, PHILIP G. GOSSLER, CHARLES A. MUNROE, THOMAS R. WEYMOUTH, THOMAS B. GREGORY, EDWARD REYNOLDS, JR., BURT R. BAY and JOHN H. HILLMAN, JR.,
Appellees.

PETITION FOR REHEARING

CLARENCE A. SOUTHERLAND,
DOUGLAS M. MOFFAT,
Attorneys for Petitioner-Appellee Columbia Gas & Electric Corporation.

DANIEL O. HASTINGS,
WILLIAM H. BUTTON,
JAMES B. ALLEY,
Attorneys for Petitioner-Appellee Columbia Oil & Gasoline Corporation.

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Appellees.

No. 268

PETITION FOR REHEARING

To the Chief Justice and the Associate Justices of the Supreme Court:

The appellees Columbia Gas & Electric Corporation and Columbia Oil & Gasoline Corporation in the above-entitled cause respectfully ask a rehearing thereof, not for the purpose of asking this Court to change its judgment that the order of the District Court appealed from be reversed, but solely for the purpose of correcting a paragraph of the opinion of this Court which contains a statement of fact believed by the appellees to be contrary to the Record. We, the undersigned counsel for said appellees, make this

request not only in the interest of our clients but also because we believe it to be the duty of counsel in a cause to contribute, in every pertinent respectful way, to the strictest accuracy of the opinions of this Court.

The paragraph of the opinion of this Court to which we refer is as follows:

> "A final contention in support of the order remains. It is based on two prior denials of motions by Mokan to intervene. Mokan made these motions on the score of its ownership of more than forty per cent. of Panhandle's stock and claimed standing in its own right. Appeals from these denials were dismissed by the Circuit Court of Appeals, 108 F. (2d) 614, and we denied certiorari, 309 U. S. 687. The denials are now urged as *res judicata*. But they were a rejection of Mokan's attempt to intervene in its own behalf. In neither instance was the relief sought a mode of enforcing Panhandle's rights under Sections IV and V of the decree. The earlier denials involved different legal claims from that now asserted, and therefore are no bar to the present proceeding."

It is respectfully called to the Court's attention that the above statement that neither of the prior motions to intervene involved an attempt, in the interest of Panhandle, to enforce its rights under Sections IV and V of the decree but involved only an attempt of Mokan to intervene in its own behalf, is not consistent with the Record, as shown by the following extracts therefrom:

Page 308 of the Record, paragraph XXXIII, contains the following language from the motion of Mokan, filed February 6, 1939, to be made a party to the cause, which

is the first of the motions referred to in the above-quoted paragraph from the opinion of this Court:

> "XXXIII. That this Petition is filed by Mokan as the owner of a substantial interest in the capital stock of Panhandle Eastern as aforesaid, both in its own right and also in behalf of and for the benefit of Panhandle Eastern for the reason that Panhandle Eastern has refused to intervene herein and to assert its rights arising out of the said violations of the said Decree."

From this it is plain that this first motion of Mokan (1) was filed not only in its own right but also in the right of Panhandle Eastern and (2) asserted Panhandle's rights under the decree, which, as this Court has decided, exist only under Sections IV and V of the decree. In fact, this first motion, in paragraph XXIX thereof (R. 307), sets out Section V in full, and previous paragraphs (pars. XIV to XVIII, R. 292 to 295) quote from Section IV and allege breaches thereof. If a fuller discussion of this is desired, reference may be made to pages 55 to 61 of the brief of appellee Columbia Gas & Electric Corporation and pages 43 and 44 of the brief of appellee Columbia Oil & Gasoline Corporation.

We would therefore respectfully ask that the paragraph of this Court's opinion quoted above be changed to correspond in this respect with the Record.

Such change of the statement of fact will also require some modification of the remaining language of the paragraph regarding the application of the principle of *res judicata*. Inasmuch, however, as this Court has decided that there are differences between the legal claims asserted in this

prior motion and the later motion under consideration on this appeal, it would result that the rule of *res judicata* would not bar the later motion in its entirety, but only operate as a bar to reopening those legal claims which were contained in the prior motion as well as in the later motion. We, of course, do not presume to state to this Court by what words the language of the said paragraph of its opinion should accordingly be modified. However, if it will help the Court in its consideration, we would suggest the following language as a substitute for the last three sentences of the paragraph in question:

> It is true that the first motion by Mokan to intervene was brought in the right of Panhandle as well as in its own right, and asserted the latter's rights under the decree as well as a general claim to intervention outside of the decree. But the earlier motion and the present motion each involved, respectively, certain legal claims differing somewhat from the claims asserted in the other motion. Consequently, while the bar of *res judicata* does apply to such legal claims, contained in the present motion, as were also contained in the first, it does not apply to the residue.

To the contention of *res judicata* the reply brief of the appellant made the following answers, which it may be presumed it will reiterate on this petition for rehearing:

> (a) That the first motion of Mokan did not seek to assert the rights of Panhandle under the decree (their reply brief, p. 16). But the above-quoted references to the Record show this to be incorrect as a statement of fact;

(b) That, assuming the first motion did assert the rights of Panhandle, the rule of *res judicata* would not apply because Mokan can take advantage of the fact that on the earlier motion it omitted to cause Panhandle to be made a party so as to be entitled to be heard and that therefore the judgment was a nullity for this purpose (their reply brief, pp. 16-20). But it was not a nullity as to Mokan in its capacity of the asserter of the rights of Panhandle, which is the same capacity in which it brings the present motion, on which it has also omitted to cause Panhandle to be actually made a party so as to be entitled to be heard; and

(c) That the denial of the first motion was not upon the merits after a trial on the facts of the allegations thereof and therefore cannot operate as *res judicata* (their reply brief, pp. 21-22). But the authorities unanimously hold that a prior motion to be made a party, denied for lack of merit on its face as was the first motion here, and unreversed, operates to bar a subsequent motion so far as the latter sets up a claim on the same facts as the earlier motion, even though there was no trial of the facts with judgment on the merits on the first motion: see *United States Trust Co.* v. *Chicago Terminal T. R. Co.*, 188 Fed. 292 at 299-300 (C. C. A. 7th 1911) and *McDonald* v. *Seligman*, 81 Fed. 753 at 759 (C. C. N. D. Cal. 1897), cited in brief of appellee Columbia Gas & Electric Corporation, pp. 58-60 and in brief of appellee Columbia Oil & Gasoline Corporation, pp. 55-56.

We, therefore, file this petition for rehearing, not for the purpose of asking this Court to change its judgment that the order of the District Court appealed from be reversed, but solely for the purpose of correcting certain statements in the opinion which do not correspond with the Record.

All of which is respectfully submitted.

CLARENCE A. SOUTHERLAND,
DOUGLAS M. MOFFAT,
Attorneys for Columbia Gas & Electric Corporation

DANIEL O. HASTINGS,
WILLIAM H. BUTTON,
JAMES B. ALLEY,
Attorneys for Columbia Oil & Gasoline Corporation

March 12, 1941.

We hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

DOUGLAS M. MOFFAT,
Attorney for Columbia Gas & Electric Corporation

WILLIAM H. BUTTON,
JAMES B. ALLEY,
Attorneys for Columbia Oil & Gasoline Corporation

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pp. 2, 4, 5.

SUPREME COURT OF THE UNITED STATES.

Nos. 268, 269.—October Term, 1940.

Missouri-Kansas Pipe Line Company, Appellant,
268 vs.
The United States of America, Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, et al.

Panhandle Eastern Pipe Line Company, Appellant,
269 vs.
The United States of America, Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, et al.

Appeals from the District Court of the United States for the District of Delaware.

[March 3, 1941.]

Mr. Justice Frankfurter delivered the opinion of the Court.

These proceedings grow out of a suit in equity brought by the Attorney General in 1935 to enforce the anti-trust laws. That suit was terminated by a consent decree the terms of which specifically reserved certain rights to the Panhandle Eastern Pipe Line Company. The issues here revolve around the scope of those provisions of the decree.

In its bill the Government charged that Columbia Gas & Electric Corporation and its controlled instrumentality, Columbia Oil & Gasoline Corporation, together with individual defendants, had conspired, for the benefit of Columbia Gas, to shut out operation in the Indiana-Ohio-Michigan area by the Panhandle Company, which had built a natural gas pipe line from the Texas fields to the border of Indiana. Panhandle was an offspring of Missouri-Kansas Pipe Line Company (hereafter called Mokan), which, at the inception of the Government's suit, still owned half of Panhandle's stock and

held half its junior debt. Columbia Gas, it was charged, had a practical monopoly of natural gas in the market which Panhandle proposed to enter, and to maintain this monopoly Columbia Gas acquired domination of Panhandle through the acquisition by Columbia Oil of half of Panhandle's stock and junior debt and its whole senior debt. These acts stifled Panhandle's potential competition, rendered it insolvent, and forced Mokan into receivership.

The consent decree sought to assure opportunities for competition by Panhandle. Deeming the terms of the decree inadequate for its purpose, the Government in 1939 reopened the proceedings. The defendants proposed modifications of the decree by a plan which the district court referred to a master. After the master's report approving the plan had been submitted but before the district court had acted upon it, two attempts to intervene were made on behalf of Panhandle. The denial of these two motions by the district court is the basis of the appeals here which come to us directly under the Expediting Act, 32 Stat. 823, as amended, 15 U. S. C. § 29. In No. 268 Mokan, as a stockholder of Panhandle, made the appropriate allegations as to the unwillingness of those responsible for the actions of the corporation to protect its interests, and moved to intervene on behalf of Panhandle. In No. 269, the motion purported to be made in Panhandle's name. In addition to the formal parties, the City of Detroit was heard here as *amicus curiae* because of its interest in the supply of gas by Panhandle.

For clarity's sake, we shall first dispose of No. 268.

Numerous arguments were pressed upon us challenging our jurisdiction over the appeal, or, in the alternative, insisting on the propriety of the action of the district court. Treating Rule 24(a) of the Rules of Civil Procedure as a comprehensive inventory of the allowable instances for intervention, it is insisted that the present case is not one for intervention as of right, and as an exercise of the district court's discretion is not reviewable here. In any event, the order of the district court is said not to be a "final decree" within the Expediting Act, compare *United States* v. *California Canneries*, 279 U. S. 553, 556, and on this score not reviewable. If the merits be here open, the order was correct because there was not "timely application", as required by Rule 24(a). Finally, various considerations of controlling public interest are invoked to sustain the district court: the Attorney General is the guardian of

the public interest in enforcing the anti-trust laws, compare *New York City* v. *New York Telephone Co.*, 261 U. S. 312; injection of new issues ought not to be allowed to delay disposition of the main litigation, see *United States* v. *Northern Securities Co.*, 128 Fed. 808, 813; a decree already entered should not be impeached by intervention, see *United States* v. *California Canneries, supra,* at 556.

All of these arguments misconceive the basis of the right now asserted. Its foundation is the consent decree. We are not here dealing with a conventional form of intervention, whereby an appeal is made to the court's good sense to allow persons having a common interest with the formal parties to enforce the common interest with their individual emphasis. Plainly enough, the circumstances under which interested outsiders should be allowed to become participants in a litigation is, barring very special circumstances, a matter for the *nisi prius* court. But where the enforcement of a public law also demands distinct safeguarding of private interests by giving them a formal status in the decree, the power to enforce rights thus sanctioned is not left to the public authorities nor put in the keeping of the district court's discretion.

That is the present case. Panhandle's right to economic independence was at the heart of the controversy. An important aspect of that independence was the extension of its operations to permit sales in Detroit. The assurance of this extension was deemed so vital that it was safeguarded by explicit provisions in the decree. Section IV, which is in full in the margin,[1] contained those

[1] "That the defendants be and they are hereby perpetually enjoined from restraining or interfering in any manner in the freedom of Panhandle Eastern to contract or to finance or arrange the financing of all contracts, extensions (including the proposed new line to Detroit, whether or not built and owned by it), repairs, maintenance, service, or improvements necessary in its business through or with any firm, person, or corporation with whom it may choose to deal (and to that end any such financial or contractual arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter);

"That if such contracts be made with or financial assistance be secured from Columbia Gas, such contracts may be made or financial assistance furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment; and in the event that Columbia Gas shall, with respect to any contract or any contractual rights of any kind whatsoever

provisions, and by Section V, also set out below,[2] Panhandle, "upon proper application", could "become a party" to the suit "for the limited purpose of enforcing the rights conferred by Section IV". Mokan, on behalf of Panhandle, claimed that Columbia Gas had made financial arrangements, which we need not detail, that would in practice defeat the free enterprise of Panhandle. We are not concerned with the substantiality of this claim. The sole question before us is whether there was standing to make the claim before the district court. We hold there was such standing. To enforce the rights conferred by Section IV was the purpose of the motion. Therefore, the codification of general doctrines of intervention contained in Rule 24(a) does not touch our problem. And since the protection afforded Panhandle by Section IV of the decree could only be secured by the remedy designed by Section V, to wit, active participation in the suit, the denial of that protection is a definitive adjudication, and so appealable. See *Credits Commutation Co.* v. *United States*, 177 U. S. 311, 316; cf. *Cobbledick* v. *United States*, 309 U. S. 323. Nor can the enforcement of this protection be deemed remotely in conflict with the public duties of the Attorney General, nor to bring in digressive issues, nor to impeach the existing decree. It is a vindication of the decree.

A final contention in support of the order remains. It is based on two prior denials of motions by Mokan to intervene. Treating Mokan's motions as made on its own behalf on the score of its ownership of more than forty percent of Panhandle's stock, the district court denied the motions. Appeals from these denials were dismissed by the circuit court of appeals, 108 F. (2d) 614, and we denied certiorari, 309 U. S. 687. The denials are now urged as *res judicata*. But they were a rejection of Mokan's attempt to intervene in its own behalf. In neither instance was the relief denied deemed a mode of enforcing Panhandle's rights under Sections IV and V of the Decree. The earlier denials involved different legal claims from that now asserted, and, therefore, are no bar to the present proceeding.

or in equity, including any remedy hereunder."

[2] "That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof."

U. S. 687. The denials are now urged as *res judicata*. But they were a rejection of Mokan's attempt to intervene in its own behalf. In neither instance was the relief sought a mode of enforcing Panhandle's rights under Sections IV and V of the decree. The earlier denials involved different legal claims from that now asserted, and therefore are no bar to the present proceeding.

In No. 269 Panhandle's intervention was sought by a different route. At a meeting of the stockholders of Panhandle a resolution was introduced authorizing this proceeding. It was defeated because Columbia Oil's holding of Panhandle stock was voted against it. Mokan claimed that this stock was disqualified from being voted on a matter so deeply touching the self-interest of the Columbia companies. If this stock be not counted, so runs the argument, Mokan's votes constituted a majority and the resolution carried. But we need not pass on these problems of corporate control, because under our decision in No. 268, Panhandle's participation, derivatively asserted by Mokan, is secured.

In a memorandum filed by the Attorney General we are advised that on January 18, 1941, the district court filed an opinion approving the plan for modifying the original decree subject to some suggestions by the Government. This, we are told, "is believed to satisfy the public interest", and so the Government desires to sustain the action of the court below without further litigation. We recognize the duty of expeditious enforcement of the anti-trust laws. But expedition cannot be had at the sacrifice of rights which the original decree itself established. We assume that the district court will adjust the right which belongs to Panhandle with full regard to that public interest which underlay the original suit.

The order in No. 268 is reversed, and that in No. 269 is affirmed.

So ordered.

Mr. Justice ROBERTS is of opinion that both judgments should be affirmed.

Mr. Justice DOUGLAS and Mr. Justice MURPHY took no part in the consideration or disposition of this case.